

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

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

WHEREAS, the Nevada FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Federal-aid Highway Program in the state of Nevada complies with Section 106 of the National Historic Preservation Act (NHPA), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, NDOT administers Federal-aid projects throughout the State of Nevada as authorized by Title 23 U.S.C. 302; and

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

WHEREAS, FHWA has determined that implementation of the Program in Nevada may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Nevada State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b); and

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

WHEREAS, FHWA has notified the public and Federally recognized Indian tribes (Tribes) with ancestral lands in Nevada about this Agreement, has requested their comments, and has taken any comments received into account; and

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

WHEREAS, Federal-aid projects as administered by NDOT may require issuance of permits pursuant to Section 404 of the Clean Water Act, and FHWA has consulted with and has invited the U.S. Army Corps of Engineers to be a concurring party to this Agreement; and

WHEREAS, FHWA has invited the Bureau of Land Management, Nevada; and the Humboldt-Toiyabe Forest, USFS; to participate in the consultation and who are invited to be either a signatory or a concurring party, as they so choose, to this Agreement; and

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

## STIPULATIONS

The FHWA, assisted by NDOT, will ensure that the following measures are carried out:

### I. **Purpose and Applicability**

1. This PA sets forth the process by which the FHWA will meet its responsibilities under Section 106, 110(d), and 110(f) of the NHPA, with the assistance of NDOT, for all FHWA undertakings implemented by NDOT. This PA establishes the basis for considering the effects of FHWA undertakings on historic properties and establishes alternative procedures to implement Section 106 for the review of such undertakings by the FHWA, the SHPO, and the ACHP.

### II. **Responsibilities of the FHWA and NDOT**

1. In compliance with its responsibilities under the NHPA, and as a condition of its award of any assistance for undertakings under the Federal Aid Highway Program, the FHWA shall require NDOT to carry out the requirements of this PA and applicable ACHP policies and guidelines for all NDOT undertakings for which the FHWA is the lead agency pursuant to 36 CFR 800.2(a)(2) and 800.2(a)(4). Through this PA, FHWA authorizes NDOT to initiate and, in most cases, conclude consultation with the SHPO

and other consulting parties for purposes of compliance with Section 106 of the NHPA.

- A. This authorization does not preclude the FHWA's right to intervene and take the lead in consultation among NDOT, the SHPO, and other consulting parties; or to consult with Indian tribes on a government-to-government basis consistent with the provisions of Stipulation III. When FHWA intervenes, it may either carry out consultation in accordance with the procedures in this PA or follow the procedures in 36 CFR Part 800.3-800.6.
  - B. Because the FHWA is legally responsible for all findings and determinations made under this agreement, no assistance or approval will be made by FHWA until it has approved the outcome of consultation with the SHPO and other consulting parties. If the FHWA does not approve the outcome of consultation for a specific undertaking, the FHWA may require NDOT to provide additional information or to perform additional consultation, or the FHWA may consult directly with the SHPO and other consulting parties, if any, to complete Section 106 review process to its satisfaction.
2. Cooperating federal agencies who recognize FHWA as the lead agency for an undertaking may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and NDOT follow the requirements of this PA and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and NDOT.
  3. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in Section 301(14) of the NHPA 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.
  4. All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of cultural resources, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology or History (published in 48 FR 44738-44739) and who has

been permitted (for archaeology only) by the state of Nevada, and who meets permit requirements of other agencies as appropriate. However, nothing in this stipulation may be interpreted to preclude FHWA or NDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

5. NDOT shall employ personnel trained, experienced and qualified in the fields of archaeology, history, and architectural history (as defined in 36 CFR 61, Appendix A) in the Environmental Services Division or its successor designated by NDOT administration. Except on such occasions when the FHWA elects to consult directly with the SHPO or the ACHP, all consultation with the SHPO under this PA and decisions made under Stipulation VI shall be performed by NDOT Environmental Division. All consultation on behalf of NDOT and the FHWA shall be performed by qualified archaeologists, architectural historians and other professionally qualified NDOT staff as appropriate.
6. To facilitate historic and archaeological preservation planning and actions, NDOT will establish and promote progressive programs and activities of mutual interest to, and in consultation with, the FHWA, the SHPO, or other consulting parties. In its annual meeting pursuant to Stipulation X, NDOT will identify if special needs exist that should be addressed through such programs and activities and prepare a plan and cost estimate to address those needs.
7. NDOT shall curate archaeological materials produced from private and State lands under this PA at a facility meeting the standards of 36 CFR 79 and NRS Chapter 381, as appropriate preferably in the State. Collections curated from Federal lands will be subject to terms of the Archaeological Resources Protection Act (ARPA) permit.
8. As the responsible federal agency, the FHWA shall conduct all formal consultation with the ACHP. Consultation with the ACHP shall follow procedures in 36 CFR 800 for consulting with the ACHP.

**III. Government-to-Government Consultation with Tribes**

1. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with

Tribes pursuant to the NHPA. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.

2. In accordance with 36 CFR 800.3(f)(12), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by NDOT according to Chapter 21.9 of the NDOT Environmental Services Procedures Guide and invited by FHWA to be consulting parties.
3. NDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
4. NDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
5. FHWA may ask NDOT to assist in consultation if the individual Tribes agree to alternate procedures.

#### **IV. Participation of Other Consulting Parties and the Public**

1. Consulting Parties
  - A. Consulting parties shall be identified pursuant to, and their participation in undertakings covered under this Agreement shall be governed by, 36 CFR 800.2(c)(5) and 800.3(f). Other individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties. Other parties entitled to be consulting parties shall be invited by NDOT to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by NDOT to participate in the Section 106 process.
  - B. NDOT shall invite any local governments (including Certified Local Governments, or CLGs) or applicants that are entitled to be consulting parties under 36 CFR 800.2(c). NDOT shall consider all written requests of individuals and organizations to participate as consulting parties and determine which should be consulting parties for the undertaking.

- C. Federal Agencies involved who have Section 106 compliance responsibilities may be consulting parties, concurring parties or signatories.

2. Public Involvement

- A. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and NDOT's environmental compliance procedures (see NDOT Environmental Services Procedures Guide, Chapter 9). FHWA's Technical Advisory (T6640.8A, October 30, 1987) and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d)(1-2), 800.3(e), and 800.11(c)(1 and 3).
- B. NDOT shall continue, through opportunities afforded by the current NDOT Public Involvement Procedures, to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
- C. For those actions that do not routinely require public review and comment (e.g., certain activities classified as Categorical Exclusions), 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.
- D. The NDOT shall make FHWA and SHPO aware within one week of any and all public controversy as it relates to the cultural resources potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

**V. Minor Projects**

- 1. Minor projects are those undertakings that have the potential to affect historic properties, but following appropriate screening (Appendix A) by NDOT Cultural Resource Specialist staff, may be determined to require no further SHPO review or consultation under this Agreement.
  - A. The undertakings listed in Appendix B do not require case-by-case review by SHPO, but may be reviewed by the SHPO in a quarterly report under this Agreement. The NDOT may consult at any time,

either formally or informally, with the SHPO on whether any undertaking may be considered to be a minor project.

- B. The undertakings listed in Appendix B may be revised or amended from time to time. Any changes to Appendix B must be agreed upon by the signatories to this Agreement. Such changes shall not be considered to be an amendment subject to Stipulation X(4).
2. On a project by project basis, NDOT shall review the project scope for all undertakings and determine whether or not they meet the conditions for minor project reviews. This evaluation shall include a consideration of whether or not circumstances are present which may preclude the use of this determination.
3. Any field review will be conducted by an NDOT Cultural Resources' staff archaeologist, architectural historian or other qualified professional (meeting the Secretary of Interior's Professional Qualification standards [48 Federal Register (FR) 44716]). The Cultural Resources staff, or other qualified professional, shall survey the project area for any cultural resource. If no historic properties are observed or affected, documentation will be gathered to this effect for the project files. If a non-NDOT qualified professional field checks the project area, the documentation must be sent to the NDOT Cultural Resources Section for review and approval. The following conditions must be met for all minor project undertakings as part of the screening performed by NDOT:
  - A. the project is limited to the "minor" activities specified,
  - B. the project is not part of a larger project that includes adverse effects to historic properties,
  - C. the project is on an existing or planned transportation facility,
  - D. the project has no known public controversy based on historic preservation issues.
4. FHWA and NDOT are responsible for any necessary tribal consultation, consultation with other consulting parties, and public involvement. Although Stipulations III and IV pertain to minor projects any action taken will reflect the nature and complexity of the undertaking.
5. If a cultural resource inventory is conducted under this stipulation, any cultural resource reports generated from the survey shall be submitted annually to the SHPO for filing.
6. If a cultural resources survey is conducted where resources are identified on Federal lands, the draft report will be provided to the Federal land manager for review prior to implementation. The Federal land manager will have a 30 day period for review and comment, if after 30 days from

- receipt of the document, NDOT receives no response, NDOT may assume the Federal Land manager has no comment and proceed.
7. If the SHPO specifically requests a copy of the documentation for a particular undertaking covered by this stipulation, NDOT will provide SHPO with the requested documentation and, if the project has not already been approved, will review the project in accordance with Stipulation VI of this Agreement.
  8. NDOT must make one of the following effect findings:
    - A. No Historic Properties Affected: no sites present, as determined by NDOT; or
    - B. No Historic Properties Affected: no historic properties (i.e., eligible for the National Register) present, as determined by NDOT; or
    - C. No Historic Properties Affected: Historic properties are present, but are completely avoided by the undertaking and there is no potential for adverse indirect effects.
  9. Documentation of Minor Projects
    - A. Any minor project shall have the following information documented as part of the project file. The finding documentation shall include:
      - a. Identification of the activity from the list in Appendix B and include a reference to this stipulation that qualifies the project as a minor project.
      - b. NDOT Cultural Resources Short Form (Appendix C) along with the most current additional documentation to assure projects are not adjacent to a National Register eligible property or district. Documentation will include one or more of the following as appropriate:
        - i. construction plans,
        - ii. project area photos and descriptions,
        - iii. soil survey data,
        - iv. architectural history,
        - v. archaeological documentation.
      - c. Name of individual who made the finding of effect and the date the finding was made.
    - B. Quarterly Reports
      - a. On a quarterly basis (no later than December 1, March 1, June 1, and September 1), NDOT shall compile a complete list of Minor Projects in a spreadsheet format for submission to FHWA and the SHPO by the end of the quarter (December 31, March 31, June 30, and September 30).



- b. This list shall include the following for each project: the county, project name and number, type of undertaking, level of effort, consultation measures, effect finding (from Stipulation V(8)(A) and a 1:24,000 map showing the location of each project.
- c. This list will be provided to FHWA and the SHPO, and if there are objections regarding the manner in which the terms of this Agreement are being carried out, will proceed in accordance with Stipulation X.

## **VI. THE SECTION 106 PROCESS**

For all undertakings reviewed pursuant to this Agreement, NDOT shall use the following process:

1. Initiation of the Section 106 Process
  - A. Establish the undertaking, determine if the undertaking is a type of activity that does not have the potential to cause effects on historic properties, and determine if the undertaking will occur on Tribal lands;
  - B. If NDOT determines that the undertaking is one with “no potential to cause effects”, NDOT will document this decision in the project record according to the July 21, 2011 FHWA Directive (Appendix D).
  - C. Develop planning to involve the public;
  - D. Identify consulting parties, including Tribes, as appropriate, during the early stages of Section 106 review and document this information on the Screening Sheet (see Appendix A). NDOT will provide the screening sheet to the SHPO and appropriate Federal Agencies. The SHPO and appropriate Federal Agencies shall have 2 working days electronic review or 5 working days hard copy review to respond or concur. If no response is received within the time period, NDOT may assume no comment and proceed.
  - E. Begin consultation with consulting parties subject to limitations specified in Stipulation III [Government to Government Tribal Consultation].
2. Identification of Historic Properties
  - A. Pursuant to 36 CFR 800.4(a), NDOT shall determine the scope of identification efforts, including determining and documenting the

undertaking's area of potential effects (APE), as defined at 36 CFR 800.16(d) and Appendix E. If NDOT wishes to consult with SHPO on the scope of the identification efforts and the definition of the APE, the SHPO shall have 30 days to respond or concur. If SHPO does not respond within that time period, NDOT may assume SHPO concurrence.

- B. Pursuant to 36 CFR 800.4(b), NDOT shall ensure the identification of historic properties that may be affected by an undertaking and shall gather information to evaluate the eligibility and integrity of these properties for listing in the National Register of Historic Places (NRHP).
- C. Information shall be obtained through cultural resource surveys or other appropriate methods.
- D. Identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with SHPO contexts, (Appendix F), FHWA guidance, NDOT Guidance, and any other guidance, methodologies, agreements, or protocols that FHWA, NDOT, and the SHPO agree should be used to identify properties, including those of other land-managing agencies.
- E. If no historic properties are found to be present in the APE, the project, if it appears on Appendix B, will be processed as a Minor Project, in accordance with Stipulation V.
- F. Engagement of consultants to assist NDOT in preparation of materials for use in the Section 106 review process shall be evaluated and reviewed by NDOT Cultural Resource Specialists prior to the commencement of a consultant's service.

### 3. Evaluating Historic Significance

- A. NDOT shall evaluate the historic significance of identified cultural resources in accordance with 36 CFR 800.4(c), and shall make appropriate findings regarding eligibility (Appendix G and H). Where historic property boundaries have not previously been established, the NDOT staff may identify recommended boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for National Register Properties. If NDOT wishes to consult with SHPO on the outcome of identification and evaluation of cultural resources, the SHPO shall have 30 days to respond or concur. If SHPO does not respond within that time period, NDOT

may assume SHPO does not object with the eligibility findings and assume SHPO concurrence with the eligibility findings.

- B. If a cultural resources survey is conducted where cultural resources are identified on Federal lands, the draft report will be provided to the Federal land manager prior to implementation for review. The Federal land manager will have a 30 day period for review and comment, if after 30 days from receipt of the document, NDOT receives no response, NDOT may assume the Federal Land manager has no comment on determination of eligibility.
- C. For undertakings that have cultural resources that are determined by the NDOT staff to be not eligible for inclusion in the NRHP, the project will be processed as a Minor Project, in accordance with Stipulation V.
- D. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, NDOT shall first consult with the disagreeing party to resolve the disagreement.
  - a. If the disagreement cannot be resolved through informal consultation, NDOT shall notify FHWA, whereupon NDOT, FHWA, the SHPO, and any consulting party (including Federal Agencies) shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.
  - b. If the disagreement is not resolved, FHWA shall refer the issue to the Keeper of the National Register to obtain a determination of eligibility.

#### 4. Finding of Effect

- A. No Historic Properties Affected
  - a. If NDOT finds that either there are no historic properties present or there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), NDOT shall make a finding of “no historic properties affected” (36 CFR 800.4(d)(1)). NDOT shall submit its finding of effect and supporting documentation to consulting parties, including SHPO, for comment (Appendix I).
  - b. For projects processed as Minor Project undertakings, the findings will be documented in the quarterly reports, and documentation submitted quarterly.

- c. NDOT shall notify all consulting parties, and make the documentation available for public inspection prior to approving the undertaking. Federal Agencies will be provided the finding of effect and have 30 days to respond. If NDOT receives no response within 30 days, NDOT may assume concurrence and proceed.

B. No Adverse Effect

- a. NDOT shall make a formal finding of “no adverse effect” if none of the undertaking’s anticipated effects meet the Criteria of Adverse Effect under 36 CFR 800.5(a)(1), or if NDOT imposes conditions that will avoid adverse effects to historic properties.
- b. NDOT shall submit its finding of effect and supporting documentation to all consulting parties, including SHPO and Tribes, for comment.
- c. NDOT may consult at any time, either formally or informally, with the SHPO regarding application of the criteria.
- d. If the SHPO or another consulting party objects within 30 days of receipt of a NDOT finding of no adverse effect, NDOT will notify FHWA. FHWA will either consult to resolve the objection or request the ACHP to review the finding pursuant to 36 CFR 800. 5(c)(2).
- e. NDOT shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of 36 CFR 800.11(c).
- f. NDOT may simultaneously request SHPO concurrence on findings of inventory, eligibility, and effect (not including adverse effect) covered by 36 CFR 800.3 through 800.5,
  - i. provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR 800.2(d).
  - ii. If the SHPO fails to comment on the multiple findings contained in a submission within 30 calendar days of receipt, NDOT may assume their concurrence and proceed.

C. Adverse Effect

- a. Where adverse effects, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), cannot be avoided, NDOT shall make a finding of “adverse effect”.
- b. Prior to any finding of adverse effect, FHWA or NDOT shall consult with Tribes that ascribe traditional cultural and religious significance to affected historic properties, and may consult either formally or informally with SHPO regarding application of the criteria of adverse effect.
- c. NDOT shall inform consulting parties including Federal Agencies of the finding of adverse effect.

5. Resolution of Adverse Effect

- A. When a finding of adverse effect has been made by NDOT, the NDOT shall, in consultation with FHWA, the SHPO, Federal Agencies and other consulting parties, evaluate alternatives or modifications to the project that would avoid, minimize, or mitigate adverse effects on historic properties. NDOT shall propose measures to resolve adverse effects, to be documented.
  - a. in a MOA, or,
  - b. as Standard Treatments that do not require the preparation of a MOA or notice to the ACHP.
    - i. Standard treatments must be agreed upon by the SHPO and any Federal Agency with Section 106 responsibilities for the undertaking.
    - ii. If another consulting party objects to the application of standard treatments, NDOT, FHWA, SHPO and any appropriate Federal Agency shall consult to determine whether the preparation of a MOA is necessary.
- B. NDOT shall make information available to the public, including the documentation specified in 36 CFR 800. 11(e), subject to the confidentiality provisions of 36 CFR 800.11(c).
- C. NDOT shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project through NDOT’s Public Involvement Process.
- D. If FHWA is not applying standard treatments, FHWA will notify the ACHP of the finding, pursuant to 36 CFR 800.6(a)(1), and that NDOT will be preparing a MOA to resolve adverse effects. NDOT will provide supporting documentation in accordance with 36 CFR 800.11(e).

- a. The ACHP shall advise the agency and the consulting parties whether it will participate within 15 days of receipt of notice.
    - b. If the ACHP fails to respond within 15 days of receipt of notice, NDOT may assume the ACHP will not participate.
  - E. If FHWA is not applying standard treatments, after consideration of the views of all consulting parties and the public, if NDOT, FHWA, the SHPO, and the ACHP (if it has chosen to participate [pursuant to 36 CFR 800 Appendix A]) agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement (MOA), pursuant to 36 CFR 800.6(c).
  - F. A copy of the MOA shall be provided to each signatory, invited signatory, and concurring party.
  - G. Once finalized, the measures to resolve adverse effects shall be incorporated into the undertaking, and the undertaking may be implemented. Such measures will be incorporated as part of the NEPA documentation.
  - H. If the NDOT determines that an undertaking may adversely affect a National Historic Landmark, NDOT will notify FHWA, who shall request the SHPO, the ACHP, and Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10.
6. Resolving Objections
- A. If FHWA, the SHPO, and NDOT are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, then FHWA shall invite the ACHP to participate in the resolution process pursuant to 36 CFR 800.6(b)(2).
  - B. If the parties fail to agree to measures to resolve the adverse effects, FHWA, the SHPO, or the ACHP may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

## **VII. EMERGENCY SITUATIONS**

1. For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system/facility repairs that are necessary to a) protect the life, safety, or health of the public; b) minimize the extent of damage to the highway system/facilities; c) protect remaining highway facilities; or d) restore essential traffic.

2. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
3. If the emergency repair project could affect historic properties, NDOT shall notify the SHPO, the FHWA, and Tribes, and appropriate Federal Agencies as appropriate, within 24 hours. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
4. 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, NDOT will comply with the procedures in Stipulation VI of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
5. For projects taking longer than 30 days for repair, NDOT will comply with the procedures in Stipulation VI.
6. Written notification of an emergency action shall be provided to the 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 anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

## **VIII. POST-REVIEW DISCOVERIES**

1. Planning for Subsequent Discoveries:  
When NDOT's identification efforts in accordance with Stipulation IV indicate that historic properties are likely to be discovered during implementation of an undertaking, NDOT shall include in any environmental document a plan for discovery of such properties. Implementation of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6. FHWA shall review the draft discovery plan.
2. Discoveries Without Prior Planning:
  - A. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after NDOT has completed its review under this Agreement, that portion of the project will stop

immediately, in accordance with NDOT Standard Specification 01355, Part 1.10 (Appendix J).

- B. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
- C. NDOT will consult with FHWA, SHPO and Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
- D. If FHWA the SHPO or a Tribe fails to file an objection within 72 hours to NDOT's plan for addressing the discovery, NDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.

## **IX. TREATMENT OF HUMAN REMAINS**

1. Native American remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found within the APE shall be treated pursuant to the Repatriation Act (NAGPRA) of 1992 (U.C.A. 9-9-401, et seq., and its implementing Rule R230-1 when found on Federal or Tribal lands. The Federal land manager is responsible for compliance with NAGPRA.
  - A. Upon discovery of NAGPRA materials, if not previously addressed in a work or data recovery plan, NDOT will notify, within 24 hours:
    - a. The Federal land manager,
    - b. The appropriate SHPO or THPO,
    - c. FHWA.
  - B. Notification may occur via email, fax, or telephone.
2. FHWA does not have any NAGPRA responsibilities because it neither owns lands in the State of Nevada nor does it act as a museum as it is defined in NAGPRA. Native American Remains and funerary objects, sacred objects, or objects of cultural patrimony removed from non-Federal lands may be subject to NAGPRA if NDOT acts as a museum, as defined in NAGPRA.
3. Upon discovery of human remains on non-Federal lands, human remains will be treated by NDOT in accordance with (Nevada Revised Statutes) NRS 383.16.



## **X. ADMINISTRATIVE STIPULATIONS**

### **1. Documentation**

- A. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11, and any applicable guidelines and procedures of land-managing agencies that may be affected by the undertaking.
- B. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to NDOT for review and approval by the NDOT. NDOT shall not transmit to FHWA or the SHPO any documentation that has not been reviewed and approved by NDOT.
- C. All documentation prepared under this Agreement shall be kept on file at NDOT and made available to consulting parties and the public at their request, consistent with applicable confidentiality requirements [as described in 36 CFR 800.11(c)].
- D. For projects processed as Minor Projects, reports and forms will be submitted on a quarterly basis, in accordance with Stipulation V(9)(B).

### **2. Monitoring Implementation of this Agreement**

- A. FHWA, the SHPO, and ACHP may review activities carried out pursuant to this Agreement. NDOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, the SHPO, and ACHP in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by NDOT in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.

- B. NDOT shall prepare the written report of these findings annually following execution of the Agreement. The initial report shall be prepared following completion of the first full Federal fiscal year under this Agreement. NDOT shall submit the annual reports to FHWA, the SHPO, and ACHP no later than three (3) months following the end of the Federal fiscal year (September 30).[include here SHPO's request for data]
  - C. NDOT, FHWA, and SHPO will meet annually to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. Prior to any such meetings, the ACHP will be notified and may participate at its discretion. Thirty days prior to the annual evaluation, NDOT shall submit the report of the previous year's activities to FHWA, SHPO, and ACHP.
  - D. NDOT shall post the annual report on their website so that it is available for public inspection at the time it is submitted to this agreement's signatories. The web posting shall include a provision that allows the public to comment on the report during the same review period as for the signatories. NDOT will consider public comments along with comments from signatories. At the request of any other signatory party to this Agreement, FHWA shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.
  - E. In conjunction with the review of the reports prepared by NDOT pursuant to this Stipulation, the signatory parties shall consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in Nevada.
  - F. If any signatory party determines that NDOT is not meeting its responsibilities under this Agreement, that signatory shall inform NDOT of the action(s) and include suggested measures to be taken to resolve the concerns.
3. Resolving Objections to Implementation of this Agreement
- A. Should any signatory party object in writing to NDOT or FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory

- parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.
- B. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
  - C. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of NDOT, shall forward all documentation relevant to the objection to the ACHP and other signatory parties, 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 CFR 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 CFR 800.7(c)(4).
  - D. 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.
  - E. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
  - F. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.

- G. 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.
  - H. At any time during implementation of the terms of this Agreement, should any consulting party or member of the public raise an objection in writing pertaining to such implementation pertaining to the Federal Aid program to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.
4. Amendment
- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
  - B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.
5. Termination
- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation X(4), or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.

- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings.
- E. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.

6. Confidentiality

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

7. Duration of Agreement

This Agreement shall remain in effect for a period of three (3) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the three year period, NDOT will notify all parties in writing. If there are no objections from signatories, the term of the Agreement will automatically be extended for an additional three years up to a limit of 21 years. If any party objects to extending the Agreement, or proposes amendments, NDOT will consult with the parties to consider amendments or other actions to avoid termination.

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

## SIGNATORIES

### FEDERAL HIGHWAY ADMINISTRATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Susan Klekar, Nevada Division Administrator

### ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

John Fowler, Executive Director

### NEVADA STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Ronald James, Nevada SHPO

### NEVADA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Susan Martinovich, Director

Concurring Parties

U.S. ARMY CORPS OF ENGINEERS

By: \_\_\_\_\_ Date: \_\_\_\_\_

Michael Jewell, Chief, Regulatory Division

## Glossary

Adjacent – very near (10 meters or less), next to, or touching.

Bridge Deck Resurfacing – Paving of the driving surface of the bridge.

Class I Reconnaissance – A professional study of existing data that includes a compilation, analysis, and interpretation of all available archaeological, historic, and paleoenvironmental data.

Maintenance Activities for Park and Rides – Maintenance activities include but are not limited to repairing, replacing control devices, remove road hazards, repairing stable road embankments, repairing parking facilities, and repairing transit facilities.

Overlay – The overlay consists of a wearing course and a base course on top of the existing road.

Pavement Grinding – A pavement preservation technique that corrects surface imperfections by removing the surface with closely spaced diamond saw blades.

Pavement Marking – include centerline stripes, lane lines, and edge striping. These may be supplemented by other pavement markings, such as approach to obstructions, stop and crosswalk lines, and various word and symbol markings.

Pavement Repair – Surface sealing and filling of cracks in pavement.

Rehabilitation (S106) – the process of returning a property to a state of utility, through repair or alteration which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Scour Protection – to remove dirt from something by rubbing it hard with something rough or by running water; bridge scour is the removal of sediment such as sand and rocks from around bridge abutments or piers. Scour protection includes riprapping the piers as the most common countermeasure.

Seal Coating – a spray of asphalt on the surface of the pavement to waterproof the pavement and base.



APPENDIX A

NDOT CULTURAL RESOURCE SCREENING FORM

PROJECT NAME:

EA: FHWA: NDOT CULTURAL RESOURCE NUMBER:

County: Cities

Roads:

FUNDING: FEDERAL AID STATE OTHER

LAND OWNER:

OTHER POTENTIAL FEDERAL INVOLVEMENT:

DOC DATE: FORM DATE:

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LOCATION:

DESCRIPTION (INCLUDING PITS): State funded project, each project separate – not bundled

Area of Potential Effect (described here and displayed on map)

Notes: \_\_\_\_\_

-----

Literature Review

- Class I literature search (date completed and by whom) \_\_\_\_\_
- Records review (i.e. SHPO, NSM, NDOT, BLM, etc.): List \_\_\_\_\_
- Project plans
- As built project plans
- Aerial photographs: List \_\_\_\_\_
- Historic Maps: List \_\_\_\_\_
- Topographic Maps: List \_\_\_\_\_
- ROW/Ownership/Parcel Data : List \_\_\_\_\_
- County Assessor Data: List \_\_\_\_\_
- NVCRIS: Date \_\_\_\_\_
- Other: List \_\_\_\_\_

SHPO Screening Form Review Date: Comments \_\_\_\_\_

Field Review

- Field review (list methods used) \_\_\_\_\_
- Pedestrian survey (Class III)  
If no field survey conducted, describe why not:
- Other (describe): \_\_\_\_\_

Consultation

- SHPO Review
- Advisory Council on Historic Preservation
- CLG and Local Government: List \_\_\_\_\_
- Tribes: List \_\_\_\_\_
- Knowledgeable Informants: List \_\_\_\_\_
- Federal and State Land Managers: \_\_\_\_\_
- Federal Permitting Agencies: \_\_\_\_\_
- National Park Service: \_\_\_\_\_
- Other: List \_\_\_\_\_
- Controversy based on historic preservation issues? If yes, consultation with SHPO and FHWA is required.

The following Supporting Documentation\* is attached. (List below)

- Maps: \_\_\_\_\_
- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

\*If a cultural resource inventory is conducted under this stipulation, any cultural resource reports generated from the survey shall be submitted to the Nevada State Historic Preservation Office for filing. Based on the screening process it is my professional determination that the subject undertaking will result in the following effect finding:

- No Historic Properties Affected: no sites present
- No Historic Properties Affected: sites present but no sites eligible
- No Historic Properties Affected: eligible sites present, but sites are completely avoided by the undertaking and the potential for substantial indirect effects is very low.
- No Adverse Effect
- Adverse Effect

Based on the outcome of the screening process, this undertaking requires no further review and consultation. Documentation of the screening will be included in the following:

- Project Files
- Quarterly Report
- Categorical Exclusion: \_\_\_\_\_
- Environmental Assessment: \_\_\_\_\_
- Environmental Impact Statement: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Completed

## APPENDIX B

The following projects, by their nature and experience by NDOT staff, have little potential to cause effect to historic properties. Some actions on this list may be considered to be undertakings with “no potential to affect historic properties” but because of the project’s setting or context, cannot be processed according to FHWA’s July 21, 2011 memorandum. These projects must result in a finding of “no historic properties affected”

### ROADS

1. Roadway surface replacement, rehabilitation, resurfacing, or reconstruction, overlays, pavement repair, seal coating, pavement grinding, and pavement marking within areas previously disturbed by construction when such activities do not take place adjacent to or within a National Register property.
  
2. Construction of turning and auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes), chain control areas, and maintenance pullouts in areas previously disturbed by vertical and horizontal construction activities except when adjacent to or within a National Register property.
  
3. All work within interchanges and within medians of divided highways in previously disturbed soils.
  
4. Erosion control within previously disturbed soils to prevent erosion of roadways.
  
5. Routine roadside maintenance activities necessary to preserve existing infrastructure and maintain roadway safety in previously disturbed areas, including but not limited to: cleaning ditches, mowing, replacing signs on existing poles, replacing non-historic guardrails, noxious weed removal, water control and water delivery systems including canals and ditches where no new ground disturbance is required, etc.
  
6. Sub-base improvement limited to the depth of the existing sub-base.

7. Construction staging areas or other locations proposed for temporary use during construction within the demonstrated vertical and horizontal limits of previous construction or disturbance.

8. Installation of noise barriers when such activities do not take place adjacent to or within a National Register property.

#### SHOULDERS AND SLOPES

9. Roadway shoulder treatments and widening within the disturbed roadway prism.

10. Borrowing of rock and rock removal and stabilization activities (e.g. rock scaling, bolting) within existing rights of way when such activities do not take place adjacent to or within a National Register property.

11. Slide corrections, slope corrections and slope flattening by placement of fill material on the side slopes to meet safety criteria, and other slope flattening done within the demonstrated vertical and horizontal limits of previous construction or disturbance when such activities do not take place adjacent to or within a National Register property.

12. Construction activities in areas of continuous slides, other mass wasting, or unstable landforms when such activities do not take place adjacent to or within a National Register property.

#### BRIDGES

13) Bridges: Projects on bridges must be confined to the condition and one of the structure ages and be one of the described activities.

a) Conditions:

- i) The project takes place in previously disturbed soils; AND
- ii) Age of structure:
  - (1) The bridge is less than 45 years old; OR
  - (2) The bridge is over 45 years old and the bridge was determined in consultation with the SHPO, to be ineligible in an historic bridge inventory less than ten years old.; OR
  - (3) The bridge is over 45 years old, is part of the Interstate system, and was not determined a National Register property under the Section 106 Exemption Regarding Effects to the Interstate Highway System adopted by the Advisory ACHP on Historic Preservation on March 10, 2005, for so long as that Exemption remains in effect (see appendix XX); OR
  - (4) The bridge has been evaluated as a historic property and the actions are limited to activities listed in (b)(i) below.
- b) Bridge Project activities:
  - i) Bridge deck resurfacing, overlay, pavement repair, seal coating, pavement grinding, and pavement marking (define actions) provided the work is limited to the roadway cross section only and does not impact structural members of the bridge. Work under this category can only take place where the existing surface is already concrete or asphalt pavement.
  - ii) Scour protection projects (define) for bridges that are not eligible for listing in or listed in the National Register of Historic Places and there are either no cultural resources, or resources are not eligible or can be avoided.
  - iii) Riprap and other erosion control methods on bridge piers in previously disturbed soils.

14. Replacement, repair, lining, or extension of culverts and other drainage structures (i.e. dikes, headwalls, ditches, drainage berms, etc) in undisturbed soils, under the conditions listed below. If both conditions of this stipulation cannot be met, full Section 106 review will be required pursuant to Stipulation VI of this agreement.

- a. The project does not include the structure, exhibit historic materials, nor does it occur within or adjacent to a historic property.
- b. An archaeological investigation (archaeological records check up to a Class I reconnaissance, as determined by the NDOT Cultural Resources Section) must be conducted to assure that no National Register properties are within the undisturbed project area. If the archaeological investigation determines that no National Register properties are present within the area of potential effect or those sites can be avoided, then the project may be reviewed as a minor project, according to Stipulation V of this agreement. If the archaeological investigation locates National Register properties, then the project must complete full Section 106 review consultation pursuant to Stipulation VI of this agreement.

15. Placement of riprap or other erosion control method to prevent erosion or waterways within the demonstrated vertical and horizontal limits of previous construction or disturbance when such activities do not take place adjacent to or within a National Register property.

## ROAD FEATURES

16. Repair/replacement of signs, kiosks, markers, fences, retaining walls, and landscaping guardrails, barriers, glare screens, and crash attenuators, when such activities do not take place adjacent to or within a National Register property.

17. Installation of new lighting, signals and other traffic control devices in previously disturbed soils when such activities do not take place adjacent to or within a National Register property.

## UTILITIES

18. Trenching or other excavation to install, replace, or repair electrical, water, sewer lines, fiber optics, telephone cable, or other utilities in areas demonstrated (define-or in kind and within existing footprints) to have been previously disturbed by construction, fill, or prior trenching activities when such activities do not take place adjacent to or within a National Register property.

#### CURBS AND SIDEWALKS

19. Modification to concrete sidewalks and curb ramps to satisfy the Americans with Disabilities Act unless on or adjacent to historic property. Compliance under the Americans with Disabilities Act (ADA) includes but is not limited to the following: ramps, railing, re-surfacing, parking, signage, trail access and restrooms.

20. Modification of existing features, such as curbs, sidewalks, and driveways when such activities do not take place adjacent to or within a National Register property.

#### MATERIAL PITS

21. Work within existing NDOT permitted material source pits, quarries or other borrow sources, or borrow pits that have been previously inventoried by NDOT within the past 20 years and where no historic properties were identified.

22. Geotechnical borings (4 inches in diameter or less), data collection, and non-invasive environmental sampling required to support the planning or design of an undertaking when such activities do not take place adjacent to or within a National Register property.

#### RAILROADS

23. Resurfacing of railroad crossings including: abandonment, removal, reconstruction, or alteration of railroad grade crossings or separations or grade crossing protection within previously disturbed soils, unless the crossing is composed historic materials.

24. In kind replacement of existing bolt connected railroad tracks and wood ties.



## TRAILS

25. Maintenance of existing trails, bicycle lanes and pedestrian walkways such as: debris removal, brush clearing, surface re-grading, drainage structures, and course design features within previously disturbed soils, unless on or adjacent to a historic property including:

- a. trail way surface replacement; rehabilitation, resurfacing, or reconstruction; overlays; laying down of crushed stone or gravel and pavement marking.
- b. shoulder treatments; pavement repair; seal coating; pavement grinding
- c. installation of new signals and other traffic control devices, trees, bike racks, directional signage, benches, trash cans, and other amenities, excluding lighting.
- d. trail heads and trail accesses that do not involve rehabilitation or alteration of National Register properties and occur within areas previously disturbed by vertical and horizontal construction activities.
- e. parking lots that occur within areas previously disturbed by vertical and horizontal construction activities.

## BUILDINGS AND STRUCTURES

26. Preliminary engineering tests, such as seismic, geologic, or hazardous materials testing that involve buildings or structures or require trenching or ground boring within previously disturbed soils unless the structure is a National Register property.

27. Maintenance and minor improvements to existing Park and Rides, except lighting, where no excavation will take place, and when such activities do not take place adjacent to or within a National Register property.

28. Additions, alterations, routine repair and maintenance to existing buildings and facilities, such as work on or in offices or equipment buildings, maintenance stations, warehouses, roadside rests, rest areas, minor transit facilities, weigh and inspection stations, toll facilities, equipment, or state-owned rentals when such activities do not take place adjacent to or within a National Register property.

OTHER

29. Construction or repair of fish screens or ladders, springs, waterholes, or stream channels when such activities do not take place adjacent to or within a National Register property.

30. Hazardous waste removal and disposal constituting a public hazard and which require immediate removal.

## APPENDIX C

### Nevada Cultural Resources Short Report

## APPENDIX D

Directive for Activities that are Undertakings with No Potential to Cause Effects to  
Historic Properties Pursuant to 36 CFR 800.3(a)(1)

## APPENDIX E

### DELINEATION OF AREA OF POTENTIAL EFFECTS (APE)

In accordance with Stipulations IV.B. and IX.B., NDOT will establish the area of potential effects (APE) for undertakings covered by this Agreement. The NDOT Cultural Resource Specialist staff, in consultation with the project manager, is responsible for describing and establishing an APE.

When the guidelines below are followed, specific consultation with the SHPO regarding APE and level of effort will typically not be necessary. Consultation with the SHPO may be needed for large and complex undertakings, when there are issues of access for inventory and evaluation, when there are concerns over delineating whole properties, or when there is public controversy such as potential for litigation, concerns expressed by outside parties, or issues related to Native American consultation.

As defined in 26 CFR 800.16(d), an APE is “the geographic area or areas within which an undertaking may directly (caused by the undertaking) or indirectly (caused by the undertaking and are later in time or further in distance, but are still reasonably foreseeable) cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” An APE therefore depends on an undertaking’s potential for effects. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property, isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations; and change in access or use.

An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the right-of-way itself, or an area either more or less than the right-of-way, depending on the scope and design of the undertaking.

An APE may extend well beyond the right-of-way. It must include all construction easements, such as slope and drainage easements, stormwater detention basins, off-site biological mitigation sites requiring ground disturbance, and mandatory borrow and disposal sites. It may include project-related activity areas such as utility relocations, access roads, equipment storage areas, or conservation or scenic easements.

An APE addresses indirect effects when warranted. Indirect effects may extend beyond the right-of-way to encompass visual, audible, or atmospheric intrusions; shadow effects; vibrations from construction activities; or change in access or use. Indirect effects can include also growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate. An

example of indirect effects could be constructing a trail near an archaeological site that may introduce visitors who would threaten damage to artifacts. Delineation of an indirect APE must be considered carefully, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting.

1. Noise: When considering potential noise effects, there must be a reasonable basis for predicting effects based on an increase over existing noise level. Noise effects should be considered when a project would result in a new through lane or a substantial change in vertical or horizontal alignment according to 23 CFR 772 and NDOT noise policy.
2. Visual: Highways on new alignments, multi-level structures, or elevated roadways are considered to have potential for visual effects if they could be out of character with or intrude upon a historic property or isolate it from its setting. Projects for improvement or expansion of existing transportation facilities that will not substantially deviate from existing alignment or profile are not expected to involve visual impacts. If circumstances indicate potential for visual effects, consultation with the SHPO may be warranted.

Different APEs may be established for archaeological and built properties:

1. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly.
2. Buildings, structures, objects, districts, traditional cultural properties, and cultural landscapes are more likely to be subject to indirect, as well as direct, effects; thus an APE for the built and cultural environment is usually broader than an archaeological APE in order to include the potential for such effects. For instance, the first row of potential properties beyond the right-of-way may be subject to such effects, and thus be included in an indirect APE when warranted.

In delineating the APE, consideration must always be given to the undertaking's potential effects on a historic property as a whole. If any part of a property may be affected, the APE will generally encompass the entire property, including the reasonably anticipated or known boundaries of archaeological sites. However, it is rarely necessary to extend an APE to include entire large districts or landscapes, large rural parcels, extensive functional systems, or long linear features, if potential effects on the whole would clearly be negligible.

The guiding principle on delineating an APE is that it should be commensurate with, and provide for, an appropriate level of effort to take into account an undertaking's potential for effects on historic properties.

While an APE will generally encompass an entire property, physical intrusion such as testing of archaeological sites must be focused on areas subject to reasonably

foreseeable effects of the undertaking, and should be guided by a project- or site-specific research design. Areas of an archaeological site that is unlikely to be affected by an undertaking should not be tested unless compelling reasons to conduct such testing are provided in the research design.

Whenever an undertaking is revised (e.g., design changes, utility relocations, or additional off-site mitigation areas), NDOT staff will determine if the changes require modifying the APE. If an APE proves to be inadequate, NDOT is responsible for informing consulting parties in a timely manner of needed changes. The APE shall be revised commensurate with the nature and scope of the changed potential effects.

In order to encourage consideration of historic properties early in the planning a design of an undertaking, NDOT staff may designate a study area of use in conducting cultural resource studies until an APE can be delineated. A study area should encompass all land that could potentially be included in the final APE. Establishing a study area is especially pertinent to those undertakings subject to a phased identification and evaluation process.

## **APPENDIX F:**

### **DOCUMENTATION STANDARDS FOR HISTORICAL RESOURCES OF LOCAL AND STATE SIGNIFICANCE**

This appendix deals with treatment of historic, not prehistoric, resources and provides standards for historic resources eligible for inclusion in the National Register at a state or local level of significance, not at a national level of significance. Should the NDOT propose to affect historic resources significant at the state or local level, the agency may propose treatment to mitigate the effect. In the past, NDOT not only consulted with the SHPO but sought advice from the National Park Service (NPS) on the kinds of treatment that would be required. NPS no longer requires HABS/HAER documentation on properties of local or state significance, instead, requesting that SHPOs create their own state standards. Seeking advice from NPS is now unnecessary unless the resource is of national significance.

To assist in preparing a treatment plan and in estimating costs, this appendix provides standards for treatment of historic resources as agreed upon by the NDOT, FHWA and the SHPO.

#### **A. Levels of Significance**

Within the framework of the National Register, the level of significance is defined as the geographic magnitude or scope of a property's historical significance and can be national, state, or local. Local significance is defined as the importance of a property to the history of its community, such as a town, city, or county. Likewise, state significance refers to the importance of a resource to the history of the state in which it is located. The following documentation standards are specific to historic resources eligible to the National Register at the local or state level of significance.

#### **B. Resource Categories**

For the purposes of this document, a historic resource is defined as a historic district, building, site, structure, or object; specifically, any such resource that is listed or eligible for listing in the National Register of Historic Places. The following is a partial listing of historic resource types that might be subjected to the level of documentation described herein:

1. District--a geographically-definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development; may also comprise individual elements separated geographically but linked by association or history. Examples of historic districts are mining sites with multiple resources, including buildings and equipment; farms and ranches; and various linear resources, such as water systems and railroads.
2. Building--a structure enclosing a space and providing protection from the elements and that shelters some form of human activity; typically includes walls,



a roof, and other components. Commercial buildings may include banks, breweries, casinos, factories, foundries, garages, hangers, laundries, mortuaries, office buildings, railroad stations, blacksmith's shops, stores, theaters, and warehouses; residential types may be single family dwellings, duplexes, apartment buildings, barracks, dormitories, hotels, bunkhouses, quarters, shacks, and shanties; institutional buildings may be academies, amphitheaters, armories, arsenals, asylums, aviaries, Capitols and other governmental buildings, churches, courthouses, fortifications, hospitals, jails, libraries, museums, post offices, and schools; agricultural and rural buildings may be barns, blinds, cellars, kennels, pole structures, Quonset huts, sheds, stables, smokehouses, and storehouses.

3. Site--location of a significant event, a historic occupation or activity, or building or structure, whether standing, ruined, or vanished, where the location itself possesses significance independent of the value of any existing structure at the location. Examples of such a resource include a battlefield, a farm, or a ranch.

4. Structure--any kind of human construction; often used to refer to an engineering work, as opposed to a building, constructed for purposes other than to provide shelter. Examples of structures include aqueducts, blast furnaces, bridges, cisterns, canals, dams, fences, fortifications, flumes, railroad turntables, reservoirs, root cellars, silos, snow sheds, spring houses, stamp mills and other mining equipment, water tanks, viaducts, wellheads, and windmills.

5. Object--a material thing of functional, aesthetic, cultural, historical, or scientific value; typically primarily artistic in nature or relatively small in scale and simply constructed; may be, by nature or design, movable yet related to a specific setting or environment. Examples include airplanes, boats, boundary markers, head stones, mile posts, monuments, railroad engines, sculptures, statuary, or steam engines.

6. Linear Features--are long, narrow works of human construction, which may be classified by the National Register as structures, districts, or sites. Examples of linear features include canals, ditches, fences, flumes, roads and trails, railroad tracks or roadbeds, walls, or water systems.

7. Properties Suffering Loss of Integrity--where there is an impaired authenticity of a property's historic identity. Examples of properties that have lost integrity, but nevertheless warrant documentation include structures moved, reconstructed, or altered; portions of linear features of which other portions remain intact; minor elements of a complex, unless architecturally distinctive; ruins, collapsed structures, or shells of structures, which may be eligible for the National Register because of their historical importance or associations, but that have little structural/architectural interest and/or integrity.

### **C. Documentation Standards**

The following documentation standards apply to the classes of historical properties defined above. In order to satisfy the documentation requirements for historic properties eligible for the National Register at the local or state level of significance, a report detailing the historical context and significance of the property, and architectural and engineering documentation, including plans and photographs of the property, must be submitted. The requirements for these elements are as follows:

Historical Documentation--is a detailed record of the historical context and significance of a property presented in a report format. Historical documentation will employ appropriate methodology to obtain the desired information. Methods and techniques of historical research should be chosen to obtain needed information in the most efficient manner. Sources will be recorded so that other researchers can verify or locate information discovered during research. Historical research to create documentation uses secondary source materials, archival materials, and primary sources, such as personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, and interviews with individuals. The historical documentation section should include the following elements:

1. Title Page--should include the title of the report, including the nature and location of the project, the author of the report, the sponsoring institution, association or agency, and the date the report was prepared.
2. Table of Contents--should list report chapters and all subdivisions, including study unit sections. Pagination must be shown in the table of contents.
3. Introduction--should summarize the purpose of the documentation, the eligibility criteria used to evaluate the resource, the level of significance the resource possesses, the reason for the treatment (i.e., impending threat to the resource), objectives for conducting the historical documentation, the scope of the project, and the agencies involved. A map showing the location of the project must be included.
4. Documentation Methodology--should include an explanation of the procedures used to execute the documentation, including the name of the researcher, date of the research, sources searched, and limitations of the project.
5. Historical Narrative--should provide a full description of the resource(s), a historical context against which significance is assessed, and a comprehensive history of the resource. The following elements should be included in this section:
  - a. Historical Context--including early settlement, historical overview, and physical development of the project area. The historical context should be guided by the thematic study units identified in the *Nevada Comprehensive Preservation Plan* (1991).

- b. Designers, Engineers, and Builders--including biographical information on architects, landscape architects, engineers, builders and contractors, and other designers who practiced in the project area.
  - c. Notable People--including biographical information on major figures in the community's history and in the history of the resource being documented.
6. Bibliography--references to secondary sources should indicate author, title, and date of publication. Primary sources should be identified by name, collection identifier, and location. Interviews should be noted including the date and location of the interview, names of both parties.

Architectural and Engineering Documentation--the historic significance of the building, site, structure, or object will be conveyed through drawings, photographs, and other materials that comprise documentation. The appropriate level of documentation for properties eligible for the National Register at a local, regional, or state level of significance must include:

1. Photographs with 35mm black-and-white negatives of exterior and interior views of the resource. The exterior should be documented by at least 6 views including a) the front and one side; b) the rear and one side; c) the front elevation; d) environmental view showing the building as part of its larger landscape; e) major elements of the building, including doors, windows, additions, etc.; and f) details, such as materials and hardware. Interior photographs should yield information about the floor plan. Three or four views should be sufficient to document the significant elements of the interior, unless the resource is large or complex;
2. Reproductions of historic photographs, if available. Provide negatives and 4-x-6 black-63 and-white photographs with submission;
3. Photocopies of existing drawings or plans (including scale), if available. If permission is required to reproduce historic photographs, plans, maps, or other materials, it is the responsibility of the researcher to obtain proper authorizations. Copies of permission forms must be submitted with the report.
4. Drawings, site plan, and sketch plan. The site plan must include the resource's orientation in its natural landscape and include the scale and a north arrow. The sketch plan will show the layout and floor plan of the resource, including all associated features. The sketch plan need not be a --measured drawing, but an approximate scale should be included.
5. All photographs, photocopies, and drawings will be labeled on the back in pencil identifying the name of the property, the date rendered, the name of

the photographer or renderer, orientation of the photograph or drawing. Photographs should not be pasted, glued, or otherwise adhered to the pages of the report. Please place them in properly-labeled archival jackets.

#### **D. Submission Requirements**

The documentation submission must include two copies sent to the State Historic Preservation Office (SHPO). Three copies will be required if the resource is located within the boundaries of a Certified Local Government (CLG), i.e., City of Reno, Carson City Historic District, City of Las Vegas, or the Comstock Historic District. The SHPO will distribute the copies to the appropriate repository (see below) and CLG. The repository's copy must include:

1. The narrative report of the resource's historical context and significance;
2. one full set of negatives;
3. one full set of black-and-white, 4-x-6 photographs in archival jackets; and
4. one copy each of drawings, plans, site plans, sketch plans, etc.

The SHPO's and CLG's copies must include all of the above except the negatives, which will be retained by the repository.

Upon receipt, the SHPO will review the documentation for completeness within 30 days. The SHPO will send its comments to the preparer for action, if needed. Any required changes should be submitted to the SHPO in duplicate (or triplicate, in the case of a CLG). The SHPO will insert the changed sections and forward the final documents to the appropriate repository.

#### **E. Records Storage--Repositories**

One copy of each treatment report will be added to the State's architectural resources inventory and will be available for public inspection at SHPO, 100 N. Stewart Street, Carson City, NV 89701, subject to NDOT's prior determination whether to withhold information from the public about the location, character, or ownership.

One copy, which will include the original negatives, will be sent to one of the following repositories, 64 depending on the location of the resource being documented subject to NDOT's determination whether to withhold information from the public about the location, character, or ownership. The following five repositories will receive one copy of treatment documentation:

1. The Nevada Historical Society, Reno
2. The Nevada State Museum and Historical Society, Las Vegas
3. The Northeastern Nevada Historical Society, Elko

4. The North Central Nevada Historical Society, Winnemucca
5. The Central Nevada Historical Society, Tonopah

There are four Certified Local Governments (CLGs) in the State of Nevada, which will receive one copy of the treatment documentation for any resources within their boundaries. The four CLGs are represented by the following organizations:

1. The Historical Resources Commission, City of Reno
2. The Historical Architecture Review Commission, Carson City Historic District
3. The Las Vegas Historical Commission, City of Las Vegas
4. The Comstock Historic District Commission, Virginia City

## APPENDIX G

### RECORDING AND EVALUATING HISTORIC LINEAR FEATURES OR DISTRICTS

Many of the most important and prominent cultural resources in Nevada are linear features from the historic period. These include trails, roads, highways, railroads, canals, telegraph lines, fences, and other similar features. Some historic linear features have an excellent documentary record showing when they were created, who was involved in their creation, where they are located, and what has happened to them during their existence. However, problems arise in determining how much to record, how to evaluate, and thresholds of integrity. As a result, a consistent method of providing the information required to record, evaluate, and manage linear features is provided in this appendix.

The evaluation of a linear resource is more challenging than that of a non-linear resource with manageable boundaries. The linear resource may possess varying states of preservation and integrity, and may pass through federal, state, county, and private lands, causing recordation and evaluation to be complex tasks. Surveys of linear resources should attempt to ascertain or reconstruct the nature, extent, and chronology of the resource, and the historical context to which it belongs. Recording linear features is problematical because the full extent of the resource usually extends beyond the APE. It should be agreed upon in advance whether the project should involve the recordation and evaluation of the entire resource or a portion of it. The investigator should prepare a historical context to evaluate the entire linear feature unless FHWA, or other Federal land manager involved and SHPO agree otherwise.

#### **A. Conducting Research for Historic Linear Features or Districts**

Pre-field research may indicate the presence of historic linear features. They may be present on GLO plat maps and USGS topographical maps. Secondary sources of history may also provide information about their presence.

When linear features are encountered, the investigator needs to assess whether a linear resource is historic in origin. The following three criteria should be applied to make such a determination:

1. Is the general alignment present on historic maps, such as GLO plats or USGS maps?
2. Does the resource possess artifacts of the period?
3. Does the resource possess physical characteristics similar to other identified linear resources?

Fieldwork must be supplemented by historical research to locate historic photographs, maps, and plans, or engineering drawings of the resource.

To evaluate the feature, the investigator will prepare a historic context using information found in records such as GLO records, State Board of Control/Engineers records, Highway Department records, Army Topographical Corps reports, USGS topographical maps, aerial photographs, and county records. General histories of Nevada and the

region should be consulted to determine if the project or the individuals involved are historically significant. Newspapers may be checked to see if the construction event was widely reported at the time or if the feature was considered important in engineering or design, and local histories should be consulted to determine if the event or individuals were considered important by the local population. The investigator should also consult the transportation chapter of the *Nevada Comprehensive Preservation Plan* (1991) and any Certified Local Governments within the APE. References should be cited in the documentation, whether they yielded pertinent information or not. The results of the records search should be incorporated into the report and onto the *Nevada Cultural Properties Form* to evaluate the linear resource.

## **B. Documenting Historic Linear Resources**

Some specific considerations for documenting linear resources are:

1. Location and Boundaries--on a map (or maps) of appropriate scale indicate the location of the known extent of the resource and identify the portion(s) being documented, as well as any feature associated with the linear resource.
  - a. Linear resources may intersect and exceed limits of an APE. Unless otherwise specified by the BLM's cultural resource specialist for projects on BLM land or if right of entry has not been obtained, recording of linear features exceeding the APE will extend 100 meters beyond the APE boundaries.
2. Description--provide information on the construction techniques, configuration of, and materials used to construct the linear feature. Describe any features and/or artifacts that may be associated with it. Describe in detail each cultural feature associated with the linear resource. Features of a linear resource generally consist of components integral to the functioning of the resource. Feature descriptions should include information about its construction details, dimensions, and any brand names or patent information recorded on machinery. Plans, cross-sections, and elevations of associated features should be included in the engineering documentation section of the report. Examples of features associated with linear resources include:
  - a. Roads: retaining walls, culverts, borrow pits, road beds and grades, fences, bridges, and tunnels;
  - b. Ditches/Water Systems: siphons, flumes, spill gates, gate valves, dams, headgates, sluices, canals, pipes, ditch/flume tenders' cabins, and reservoirs;
  - c. Trails: blazes, cairns, retaining walls, and paving;
  - d. Railroad Grades: through cuts, sidings, retaining walls, culverts, spurs, signals, switch stations, depot remains, fences, bridges, tunnels, and trestles;
  - e. Telegraph/Power Lines: poles, access roads.
3. Setting--Describe in detail the natural or physical environment through which the linear resource passes. Such information would include descriptions of natural features, landscape characteristics, slope, vegetation, etc. Provide an estimate of the proportion of the resource that has been destroyed or modified, where possible.

4. Dimensions--describe the dimensions of the entire linear feature or the portion being documented in the following manner:
  - a. Top Width--measure the linear feature at its highest point. For water systems such as ditches and canals, the top width should be measured at the crest of the berm(s) or wall(s). Record more than one width or range of widths, if appropriate. For example, a single water delivery system may be composed of a flume, earthen ditch, and concrete canal with different top widths. Clearly identify the elements being measured and the locations where measurements were taken.
  - b. Bottom Width--provide a width for the base of the feature, or provide a range of widths, as appropriate.
  - c. Height or Depth--provide the maximum depth or height of the resource, as applicable, or indicate the variation in that dimension along the length of the linear feature, or the segment being documented. Note any changes to this measurement, such as siltation in a ditch.
  - d. Length--provide the overall length of the linear feature and the segment being documented, if applicable.

### **C. Evaluating Historic Linear Resources: National Register Criteria and Integrity Issues**

Evaluating the significance and National Register eligibility of a linear resource is as problematical as documenting it, because it may be significant under one or more of the four National Register eligibility criteria, and it most likely will display varying states of preservation and integrity. An investigator must identify the criteria under which the linear resource may be eligible for inclusion in the National Register before considering integrity issues. However, integrity, and thereby eligibility may be determined on a segment-by-segment basis.

The National Register defines integrity as the ability of a resource to convey its significance. The evaluation of integrity must always be grounded in an understanding of a resource's physical features and how they relate to its significance. To retain historic integrity a resource will possess at least several of the seven aspects of integrity. These aspects of integrity are: location, design, setting, materials, workmanship, feeling, and association.

Setting is an important factor in demonstrating integrity of a linear resource. The setting must reflect the character of the historic period with minimal intrusive elements. The National Register has been liberal in the evaluation of numerous linear resources in Nevada by determining eligibility on the basis that there has been little change in the landscape since the historic period. For example, a railroad grade may lack ties and tracks, but if little of its historical appearance has changed, it may still be eligible for the National Register under Criterion A. In this instance an assessment of whether or not the rail road grade has more than minimal value for preservation in place (to address the Section 4(f) issue). Because of the importance of setting to a linear resource, viewsheds may become a major consideration in determining project effects. However,



setting may be less important in evaluating a water conveyance feature because the feature may be most significant for its engineering, and its design and workmanship become most important in determining integrity.

Some linear resources possess structural and/or engineering features (e.g., the Marlette Lake Water System), and some possess none (e.g., the Old Spanish Trail). Therefore, assessing integrity of design and workmanship may have limited applicability, or it may be highly significant. Some considerations regarding design and workmanship might be to determine if the linear feature has distinctive engineering features such as rock retaining walls, trestles, or culvert. If so, determine whether these elements exhibit structural integrity. If the resource retains some degree of its original fabric and workmanship, ascertain if it is sufficient to demonstrate the feature's significance. Significance might then be viewed in terms of distinction as a representative of a type or style. It would also be important to determine if there are any other associated resources present and in sufficient numbers to convey an understanding of the linear resource.

On-going maintenance and continued use of a linear resource may or may not affect the resource's integrity. Maintenance and use that has been conducted consistent with methods employed when the resource was developed do not compromise the historic integrity of the resource. These resource activities include canals, the use of roads along the canal, and cleaning silt from the canal; for railroads, the in-kind replacement of ties, rails and switching facilities; and for roads, in-kind repairing, grading, and cleaning of roads. Maintenance and use that is not consistent with historic use compromise the integrity of a historic resource. Such actions would include changing headgate or siphon design for canals, lining earthen ditches with concrete, changing the ballast type, rail type, or other structures for railroads, and changing the surface material and grade of roads. Modification of the route of any linear feature may also compromise its integrity.

Feeling and association may be important facets of integrity for trails (Oregon-California Emigrant Trail), but their retention alone is never sufficient to support eligibility of a property for the National Register.

## APPENDIX H:

### RESOURCE TYPES CATEGORICALLY NOT ELIGIBLE

#### A. Isolate artifact

A single artifact or pieces from a single artifact, i.e., 10 pieces of glass from a single bottle. An isolate artifact is considered single and unassociated when separated by 30 meters or more from any other artifact. For example, two flakes of the same or different raw material separated by 29 meters would be documented as a site. Ten pieces of glass from a single bottle spread across 31 meters would be an isolate. Isolates are not recorded on a site form, but are listed in a table designated by number, description, and location.

#### B. Isolated or Unassociated feature

A single feature unassociated with other features or artifact scatters that are undateable; e.g. a prospect pit, a claim marker, an audit, or a shaft. An isolated or unassociated feature is considered single and unassociated when separated by 30 meters or more from any other feature or artifact. If these features are elements to a historic district, they are not isolated or unassociated. In addition, if an isolated feature is unique because of its construction (elaborate stonework claim marker) or distinctive qualities, the feature has to be evaluated for eligibility. Isolated features that have potential data (fire hearth) need to be evaluated for eligibility. Isolated or unassociated features need not be recorded on a site form, but are listed in a table designated by number, description, and location.

#### C. Post-1950 Cultural Resources

Cultural resource sites that post-date 1960 (or contain a majority of artifacts that post-date 1960) are not considered eligible for the purposes of Section 106 compliance unless the site is of exceptional significance as defined in National Register B Bulletin 22, entitled *How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years*.

#### D. Unassociated Historic Artifact Scatters

This site type is categorically not eligible when it cannot be definitively associated with a specific historic theme as defined in the *Nevada Comprehensive Preservation Plan* (1991). One example of this site type is a single episode roadside refuse deposit.

Unassociated artifact scatters will be considered categorically ineligible with the submission of the following information:

1. A minimal level of archival research does not reveal a possible association.  
The feature or site in question may not be depicted on the following documents:
  - a. General Land Office map (provide date);
  - b. Land Status map;
  - c. Mineral Survey records;
  - d. Nevada State Museum records;
  - e. State Water Engineer's records;

- f. 15 minute Quadrangle (provide date); or
- g. Local city and county records.

- 2. A brief justification for this determination will be included in the eligibility section of the report and will address the following topics:
  - a. location and type of nearest recorded site; and
  - b. location of the nearest known town, community, or historical development.

### **E. Linear Resources**

Linear resources in isolation from other linear resources, archeological deposits, and buildings/structures are discussed below in this framework for categorical exemptions. Artifacts directly associated with that linear resource, such as an insulator for a telecommunication line is considered inclusive to that linear resource. If only a segment of the linear resource is present within the project area, and is determined ineligible (non-contributing), the remaining portions of the linear resource are considered unevaluated for the purposes of Section 106 compliance.

- 1. Roads/Trails: If a road or trail is undateable, cannot be historically associated with a historic theme, lacks engineered features associated with the road or trail, and has been bladed, then that segment is considered not eligible under all criteria.
- 2. Water Conveyance: If a water conveyance system is undateable, cannot be historically associated with a historic theme, and lacks engineered features associated with the water conveyance feature, then that segment considered as not eligible under all criteria.
- 3. Fences: If a fence is undateable, lacks unique construction features, is constructed of metal T-posts and barbed wire, then that segment of the fence is considered not eligible under all criteria.
- 4. Telecommunication lines (telegraph, telephone, power transmission): If a telecommunication line is undateable, lacks unique engineered features associated with that segment of the telecommunication line, then that segment is considered not eligible under all criteria.

Text Reference - New Classes of Properties Not Eligible for the National Register: FHWA and any Federal land manager (for properties on their lands of jurisdiction) and the SHPO may jointly determine a class or classes of properties to be not eligible for listing on the National Register.

## APPENDIX I:

### AVOIDING PROPERTIES

#### A. Avoiding through Standard Measures

The following protection measures shall be implemented as appropriate for all NDOT undertakings. At a minimum, historic properties shall be excluded from areas where activities associated with an undertaking will occur as follows:

1. All proposed activities, facilities, improvements, and disturbances shall avoid historic properties. Avoidance means that no activities, unless specifically identified in this PA, associated with an undertaking that may affect historic properties shall occur within a site's identified site boundaries, including any defined buffer zones. Portions of undertakings may need to be modified, redesigned, or eliminated to properly avoid historic properties.
  - a. For historic properties eligible or important only for the information they contain, the physical demarcation of historic properties, and their exclusion from an undertaking's proposed activity areas is a minimum requirement.
  - b. Physical demarcation and avoidance during the implementation of an undertaking is also required for properties eligible under other criteria. But minimum protection requirements will also include the use of buffer zones to extend the protection area around properties where setting is an important attribute, and the proposed activity may have an effect on the setting's quality.
2. All historic properties within an APE shall be clearly delineated prior to implementing any associated activities that have the potential to effect historic properties.
  - a. Historic property boundaries shall be delineated with coded flagging and/or other effective marking. Activities within historic property boundaries will be prohibited except for travel on developed roads when the Cultural Resource Specialist recommends that such use is consistent with the terms and purposes of this agreement. Flagging and other markings will be removed as soon as possible to avoid calling undue attention to cultural resources.
  - b. Historic property location and boundary marking information shall be conveyed to appropriate NDOT administrators or employees responsible for implementation so pertinent information can be incorporated into planning and implementation documents, and contracts (e.g., clauses or stipulations in permits).

3. Buffer zones may be established to ensure added protection where the Cultural Resource Specialist or other professional archaeologist determines that they are necessary. The use of buffer zones in conjunction with other avoidance measures are particularly applicable where setting contributes to the property's eligibility, or where it may be an important attribute of some types of historic properties (e.g., historic buildings or structures; properties important to Native Americans). The size of buffer zones needs to be determined by the professional archaeologist on a case-by-case basis. Landscape architects may be consulted to determine appropriate view sheds for historic resources. Knowledgeable Native Americans will be consulted when the use or size of protective buffers for Native American traditional or cultural properties needs to be determined.
4. When any changes in proposed activities are necessary to avoid historic properties (e.g., 66 project modifications, redesign, or elimination; removing old or confusing project markings or engineering stakes within site boundaries; or revising maps or changing specifications), these changes shall be completed prior to initiating any activities.
5. Monitoring may be used to enhance the effectiveness of protection measures in conjunction with other measures. In any instance where monitoring is implemented, it shall not proceed until a monitoring/discovery plan is prepared and approved by NDOT. This plan should be shared with all consulting parties and any comments received considered prior to its implementation.

## **B. Avoiding through Non-Standard Measures**

1. Scope
  - a. Appropriate Undertakings: This exemption applies to, but is not limited to, undertakings, such as small projects, fences, minerals exploration drilling, OHV events on developed roads, rights-of-way, wild horse gathers, wildlife guzzlers, interpretive and regulatory signs, materials pits, and fire rehabilitation seedings that are relatively easy to redesign or move to avoid cultural resources or for which effects are relatively temporary or ephemeral. It does not apply to undertakings that do not meet these requirements or where there may be visual or other effects to setting that cannot be avoided. It will not be used for major federal actions (requiring an Environmental Impact Statement or major Environmental Assessment).
  - b. Appropriate Measures: Undertaking redesign or relocation is the most appropriate avoidance measure under this exemption. Temporary physical barriers are probably the next most effective. Active monitoring should be considered as a last resort and only used in limited circumstances or highly sensitive situations.

## 2. Procedures

- a. The APE will be determined prior to inventory and inventoried to Class III standards.
- b. All cultural resources in the APE will be recorded in conformance with the format and content requirements in the BLM Handbook.
- c. The NDOT will determine appropriate administrative or physical measures to avoid effects to all cultural resources, excluding isolates, within the APE and include these measures as stipulations in environmental documentation and the decision record for the undertaking. The proponent of the undertaking will be required to agree to these stipulations prior to authorization.
- d. Once the avoidance measures have been developed, stipulated, and accepted by the proponent the undertaking can be authorized without specific consultation with the SHPO.
- e. The eligibility of cultural resources should be determined during initial inventory. If determining the eligibility of a cultural resource involves subsurface testing, extensive archival research or other extensive additional data gathering, then eligibility can be deferred as long as the resource is treated as if it is eligible.

Text Reference - 2. No Historic Properties Affected: If the NDOT determines that identified historic properties will be avoided with the Standard Measures, the NDOT can determine that the undertaking will have no effect on historic properties and proceed with the undertaking without SHPO consultation. Documentation for the undertaking will include the basis for this determination.

## APPENDIX J

### NDOT STANDARD SPECIFICATION FOR DISCOVERY OF HISTORIC, ARCHEOLOGICAL OR PALEONTOLOGICAL OBJECTS

#### Standard Specification Section 107.12, Discovery of Historical, Archaeological or Paleontological Objects

Standard Specification Section 107.12, Discovery of Historical, Archaeological or Paleontological Objects, will be enforced during this project. This specification stipulates procedures to be followed should any archaeological, historical, or paleontological resource be discovered during construction of the project. These procedures are as follows:

1. Immediately suspend construction operations within 200 feet of the vicinity of the discovery if a suspected historic, archeological or paleontological item, feature, prehistoric dwelling sites or artifacts of historic or archeological significance are encountered.
2. Verbally notify the ENGINEER of the nature and exact location of the findings.
3. The ENGINEER contacts the NDOT Chief of Environmental Services and the Chief Archaeologist to determine the disposition of the objects.
4. Protect the discovered objects and provide written confirmation of the discovery to the ENGINEER within 2 calendar days.
5. The ENGINEER keeps the CONTRACTOR informed concerning the status of the restriction. The time necessary for the DEPARTMENT to handle the discovered item, feature, or site is variable and dependent on the nature and condition of the discovered

item. Expect a two (2) week or more delay in the vicinity of the discovery. The Engineer will provide written confirmation when the restriction is terminated.

Should a discovery occur, the FHWA will consult with the SHPO/THPO, and the ACHP in accordance with 36 CFR 800.13(b)(3) toward developing and implementing an appropriate treatment plan prior to resuming construction.