

**AMENDED  
PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER, THE ADVISORY  
COUNCIL ON HISTORIC PRESERVATION, AND THE ARKANSAS DEPARTMENT  
OF TRANSPORTATION  
REGARDING SECTION 106 IMPLEMENTATION FOR FEDERAL-AID  
TRANSPORTATION PROJECTS**

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

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

**WHEREAS**, ARDOT, as authorized by Title 23 U.S.C. 302, administers Federal-aid projects throughout Arkansas that are carried out with FHWA financial assistance or require a FHWA permit or approval, and ARDOT has participated in the consultation and is an Invited Signatory to this Programmatic Agreement (Agreement); and

**WHEREAS**, the responsibilities of the Arkansas 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 Arkansas 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 SHPO, a Signatory to this Agreement, and the Advisory Council on Historic Preservation (ACHP), pursuant to 36 CFR 800.14(b) of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, the ACHP has formally accepted to participate in this Agreement and is a Signatory to this Agreement; and

**WHEREAS**, FHWA solicited the participation of the U.S. Army Corps of Engineers, Little Rock (Corps), Memphis, and Vicksburg Districts, the U.S. Coast Guard (USCG), and U.S. Fish & Wildlife Service (USFWS) in the development of this Agreement in letters

sent on June 2, 2023, due to the authorization of Federal permits involved with the implementation of the Program and has not received responses; and

**WHEREAS**, the FHWA has consulted with Federally-recognized Indian tribes (Tribes) with historic, ancestral and ceded land connections in Arkansas about this Agreement and requested their review and comments of the Agreement. These Tribes include Absentee Shawnee Tribe of Indians in Oklahoma, Alabama-Quassarte Tribal Town, Caddo Nation, Cherokee Nation, Chickasaw Nation, Choctaw Nation of Oklahoma, Delaware Nation, Eastern Shawnee Tribe of Oklahoma, Jena Band of the Choctaw Indians, Kialegee Tribal Town, Mississippi Band of Choctaw Indians, Muscogee Nation, Osage Nation, Quapaw Nation, Seminole Nation of Oklahoma, Shawnee Tribe, Thlopthlocco Tribal Town, Tunica-Biloxi Tribe of Louisiana, Inc., United Keetoowah Band of Cherokee Indians in Oklahoma, and Wichita & Affiliated Tribes; and

**WHEREAS**, the Caddo Nation had no comments, and the Choctaw Nation of Oklahoma and the Quapaw Nation requested to participate in the consultation process for this Agreement; and

**WHEREAS**, the Osage Nation provided comments, and FHWA has taken any comments received into account; however, the Osage Nation rescinded their original request to participate as an Invited Signatory to the Agreement on October 25, 2023; and

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

**WHEREAS**, FHWA has solicited public participation from Preserve Arkansas, Arkansas Municipal League, and Association of Arkansas Counties about this Agreement, has requested their comments in letters dated June 2, 2023, and Preserve Arkansas requested to participate in the consultation process for this Agreement; and

**WHEREAS**, FHWA has notified the Certified Local Governments about this Agreement, has requested their comments in letters dated June 2, 2023, and El Dorado and Little Rock Historic District Commissions requested to participate in the consultation process for this Agreement; and

**WHEREAS**, FHWA has notified pertinent state organizations, Arkansas Archeological Survey (ARAS), and Arkansas Historical Association about this Agreement, has requested their comments in letters dated June 2, 2023, and ARAS requested to participate in the consultation process for this Agreement; and

**WHEREAS**, pursuant to the consultation conducted under 36 CFR 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on

historic properties in Arkansas and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

**WHEREAS**, ARDOT employs a staff of Cultural Resources Specialists and employs consultants, who meet the Secretary of Interior's Professional Qualification Standards (48 FR 44738-44739) in the fields of archaeology, architectural history, and history to carry out ARDOT's cultural resources programs and responsibilities and are capable of completing many of the steps of the Section 106 review process on behalf of FHWA; and

**WHEREAS**, this Agreement shall supersede and replace the previous Memorandum of Agreements executed by the FHWA, ARDOT (formerly Arkansas State Highway and Transportation Department [AHTD]), and SHPO on March 3, 1992, and June 28, 1999; and

**WHEREAS**, the FHWA, SHPO, ACHP, the Osage Nation, and ARDOT originally executed the Agreement on February 18, 2021, and subsequently will be amended in early 2024 to remove the Osage Nation as an Invited Signatory; and

**WHEREAS**, the FHWA, SHPO, ACHP, and ARDOT have consulted and agreed to amend the Agreement, and this Agreement supersedes the earlier Agreement.

**NOW THEREFORE**, the FHWA, SHPO, ACHP, and ARDOT agree that the Program in Arkansas 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 Arkansas and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

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

- I. Applicability and Scope
- II. Professional Qualification Standards
- III. Responsibilities of FHWA and ARDOT
- IV. Establishing the Area of Potential Effects
- V. Undertaking Review
- VI. Changes in Project Scope
- VII. Consultation with Tribes
- VIII. Participation of Other Consulting Parties and the Public
- IX. Emergency Situations
- X. Post-Review and Unanticipated Discoveries
- XI. Treatment of Human Remains
- XII. Administrative Stipulations
- XIII. Amendment
- XIV. Termination
- XV. Confidentiality
- XVI. Duration of Agreement

## **STIPULATIONS**

The FHWA, with the assistance of ARDOT, will ensure that the following stipulations are carried out.

### **I. APPLICABILITY AND SCOPE**

- A. This Agreement sets forth the process by which the FHWA, with the assistance of ARDOT, will meet its responsibilities under Sections 106 and 110 of the NHPA (54 U.S.C. §§ 306102 and 306108) for all FHWA projects implemented through ARDOT. This Agreement establishes the basis for considering the effects of FHWA projects on historic projects and establishes alternative procedures to implement Section 106 for the review of such projects by the FHWA, SHPO, ACHP, and ARDOT.
- B. The objective of this Agreement is to make more efficient the methods by which FHWA and ARDOT review individual undertakings under Section 106 that may affect historic properties and to establish the process by which the FHWA and ARDOT carry out their Section 106 responsibilities.
- C. Through this Agreement, FHWA authorize ARDOT 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.
- D. The FHWA retains the responsibility to consult with the Tribes as required under 36 CFR Part 800, as amended. ARDOT may assist FHWA if individual Tribes agree to alternate procedures as identified in Stipulation VII. Consultation with Tribes.
- E. Cooperating Federal Agencies, who recognize FHWA as the lead Federal agency for an undertaking, may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and ARDOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and ARDOT.

### **II. PROFESSIONAL QUALIFICATIONS STANDARDS**

All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, 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 (SOI) Professional Qualifications Standards (published in 48 FR 44738-44739). However, nothing in this stipulation may be interpreted to preclude FHWA or any agent or contractor thereof from using the services of person who do not meet these qualifications standards, providing their activities are conducted under the

supervision of a person who does meet the standards.

### **III. RESPONSIBILITIES OF FHWA AND ARDOT**

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

#### **A. FHWA Responsibilities**

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by ARDOT under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out by ARDOT under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with the Tribes as required under 36 CFR 800.3(f)(2). FHWA may ask ARDOT to assist in consultation if the individual Tribes agree to alternate procedures.
3. Pursuant to 36 CFR 800.6(a)(1), FHWA is responsible for notifying the ACHP of an adverse effect determination and offering the ACHP the opportunity to become a consulting party.
4. FHWA shall provide ACHP copies of any Memoranda of Agreement (MOA) or Programmatic Agreement (PA) used to resolve the adverse effects to historic properties of the undertaking.
5. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XII.B of this Agreement.

#### **B. ARDOT Responsibilities**

ARDOT, using Cultural Resources Staff and/or consultants, as defined in Stipulation II, will independently perform the work and consultation described in 36 CFR 800.3 – 800.6 (including any succeeding revisions to the regulations) on behalf of FHWA. Assignment of these responsibilities is based on adequate and appropriate performance by ARDOT as evaluated in monitoring by FHWA pursuant to Stipulation XII.A of this Agreement. The responsibilities include carrying out the following requirements:

1. Determine under 36 CFR 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Determine whether the undertaking has the potential to affect historic properties on historic, ancestral and ceded lands of the Tribes, as described in 36 CFR 800.3(c).
3. Solicit public comment and involvement in accordance with 36 CFR 800.3(e) and ARDOT's public involvement procedures.

4. Except as identified in Stipulation VIII, identify additional consulting parties, as described in 36 CFR 800.3, and invite them to participate in the undertakings covered by this Agreement.
5. Except as identified in Stipulation IV, determine and document, in consultation with the SHPO, the Tribes, the scope of identification efforts and level of effort, including the undertaking's Area of Potential Effect (APE), as described in 36 CFR 800.4(a) and (b).
6. In consultation with SHPO and the Tribes that might attach religious and cultural significant to properties within the APE, identify and determine the eligibility of properties within the APE, as described in 36 CFR 800.4. FHWA and ARDOT recognize that the Tribes possess knowledge regarding the locations and natures of historic properties and archaeological or historic places of religious and cultural significance, which FHWA and ARDOT are unaware.
7. Determine whether historic properties may be affected by the undertaking by applying the criteria of adverse effect, as described in 36 CFR 800.5(a)(1).
8. In consultation with FHWA, the SHPO, the ACHP (if it has chosen to participate), the Tribes, and any other consulting parties, ARDOT will resolve adverse effects, as described in 36 CFR 800.6, through the development, circulation, and execution of a MOA or PA, as appropriate.
9. Ensure conformance with the SOI's Standards and Guidelines for Archaeology and Historic Preservation and the Appendix B of the State Plan: Guidelines for Fieldwork and Reporting Writing (updated 2010) and any successor to those guidelines.
10. ARDOT shall ensure that all archaeological materials, records, and reports produced under this Agreement are accessioned at a curation facility in accordance with the standards of 36 CFR 79.
11. ARDOT Cultural Resources Staff shall follow the internal procedures, as outlined in Attachment 1.

#### **IV. ESTABLISHING THE AREA OF POTENTIAL EFFECTS (APE)**

On behalf of the FHWA, ARDOT shall follow the procedures in 36 CFR 800.4(a) to determine and document an undertaking's APE as defined in 36 CFR 800.16(d).

- A. For large or complex projects when there is public controversy, issues of access for inventory and evaluation, or concerns over delineating whole properties, ARDOT shall consult with SHPO staff, and consulting Tribes and present a proposed APE boundary for the project. Following this consultation, ARDOT shall send a map and written description of the APE to SHPO and the consulting Tribes requesting comments on the boundary within thirty-(30) calendar days.
- B. For all other projects that do not conform to Stipulation IV.A, a separate meeting with SHPO to discuss the APE is not necessary. A detailed written

description and map for the APE boundary shall be included in the survey report and/or other Section 106 documentation for the project.

- C. ARDOT shall afford identified consulting parties an opportunity to comment on the APE for all projects.

## V. UNDERTAKING REVIEW

ARDOT Cultural Resources Staff will implement the following review and consultation processes under Section 106 for their undertakings that require funding.

- A. Undertakings that have no potential to cause effects to historic properties (36 CFR 800.3(a)(1)):
  - 1. FHWA limits these to only non-construction related activities. For example, purchasing equipment and release of funds for planning studies and design activities fall under this portion of the regulation and do not require consideration under Section 106.
  - 2. Undertakings that have no potential to cause effects to historic properties do not include construction or maintenance activities. Questions about applicability should be referred to the Lead Federal Preservation Officer (FPO).
- B. Exempted Projects: Undertakings, which by their nature and definition, constitute activities that pose little/minimal potential to affect historic properties. ARDOT may add additional activities to the list in Appendices A and B upon written notice and concurrence by the Signatories and Invited Signatories to this Agreement. Appendices A and B will be reported in accordance with Stipulation XII.A.
  - 1. **Appendix A** lists Unscreened Projects that require internal review by ARDOT Cultural Resources Staff to determine if a project is limited to the existing transportation facility and therefore meets all of the terms outlined in Appendix A. If so, these projects shall not require Section 106 review or consultation. ARDOT Cultural Resources Staff will document all projects with those activities and maintain that document in the project file (see Attachment 1.III.1).
  - 2. **Appendix B** lists Screened Projects that require internal review by ARDOT Cultural Resources Staff to determine if a project meets all of the terms outlined in Appendix B. ARDOT Cultural Resources Staff will document all projects with those activities and maintain that document in the project file (see Attachment 1.III.2). These projects shall not require Section 106 review as long as the following conditions are met:

- a) Will be reviewed in their entirety by ARDOT Cultural Resources Staff with archaeological and architectural record, literature, map, and aerial reviews and field work done, as applicable, to assess previously disturbed ground.
- b) Will be limited to the activity(ies) specified in Appendix B.
- c) Will not be part of a larger undertaking.
- d) Will not occur within or adjacent to a historic property (unless otherwise noted in the listed activities).
- e) Will not involve right-of-way acquisition (unless otherwise noted in the listed activities).
- f) Will not be segmented by activity or subject to differential review procedures.
- g) Will not involve a consulting party, such as a Tribe, that expresses concern for the project or for historic properties and archaeological or historic places of religious and cultural significance to that Tribe.

C. Undertakings with potential to affect historic properties:

If the project does not meet the criteria in Appendix A or Appendix B, as described in Stipulation V.B, ARDOT shall ensure the completion of the requirements of 36 CFR 800.3 through 800.6 and implement the following steps.

1. **Finding of No Historic Properties Affected.** For any undertaking that includes no historic properties present, or there are historic properties present but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), ARDOT shall make a finding of “no historic properties affected” and provide documentation to SHPO, the consulting Tribes, and other consulting parties, as appropriate. The type of documentation submitted will follow the procedure as stated in Attachment 1.IV or Attachment 1.VI. ARDOT shall request SHPO concurrence on the finding. If SHPO does not respond within thirty (30) calendar days, their concurrence will be assumed.. No further review under Section 106 is required for a finding of no historic properties affected unless the scope of work or limits change, thus requiring additional review. Should any consulting party object, the disagreement will be resolved in compliance with 36 CFR 800.4(d)(1).
2. **Finding of No Adverse Effect.** For any undertaking that includes historic properties within the APE that will not be adversely affected by an undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), ARDOT shall make a formal finding of “no adverse effect.” ARDOT shall submit to SHPO, the consulting Tribes, and consulting parties, as appropriate, this finding along with the appropriate supporting



documentation. The type of documentation submitted will follow the procedure as stated in Attachment 1.IV or Attachment 1.VI. ARDOT shall seek SHPO concurrence on the finding. If no objection is received within thirty (30) calendar days from SHPO or any other consulting party, SHPO concurrence will be assumed. ARDOT shall consult with the consulting Tribes on findings of no adverse effect when sites identified by the Tribes to be of significant cultural, traditional, and/or religious value to the Tribes are present within the APE. ARDOT shall make documentation available for public inspection (subject to confidentiality provisions) upon request, prior to approving the undertaking. No further review under Section 106 is required for a finding of no adverse effect unless the scope of work or limits change, thus requiring additional review. Should any consulting party object, the disagreement will be resolved in compliance with 36 CFR 800.5(c)(2).

3. **Finding of Adverse Effect.** For any undertaking that includes historic properties within the APE that will be adversely affected by the project, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), ARDOT shall make a formal finding of “adverse effect.” ARDOT shall submit to SHPO, the consulting Tribes, and consulting parties, as appropriate, this finding along with the appropriate supporting documentation. The type of documentation submitted will follow the procedure as stated in either Attachment 1.VI or Attachment 1.VII. If any project results in adverse effect to historic properties and cannot be avoided, ARDOT Cultural Resources Staff will notify FHWA, and FHWA will notify the ACHP of the finding of adverse effect and consult with the SHPO, the consulting Tribes, and other consulting parties, as appropriate, in order to resolve adverse effects and conclude the Section 106 process in accordance with 36 CFR 800.6.

## **VI. CHANGES IN PROJECT SCOPE**

- A. When there is a project scope change, or a new project element is added to an undertaking after Section 106 review has concluded, or when a project undergoes an environmental re-evaluation, then ARDOT, in consultation with the Lead Federal Agency with jurisdiction, will assess the need for additional consultation with SHPO and other consulting parties following the process laid out below.
- B. Additional consultation will not be required under the following conditions:
  1. The APE has not changed beyond the limits of previous identification efforts; and
  2. There is no change to the earlier effects finding; and

3. Less than five (5) years have passed since historic properties have been recorded within the APE, and any previous archaeological surveys conducted within the APE met current state standards; or
  4. The project scope change is an action listed in Appendix A or Appendix B and is exempted from further review.
- C. ARDOT will document in a memorandum the design changes and that the above conditions have been met and no additional consultation is required. ARDOT will include this documentation in its annual report per Stipulation XII.A.
- D. If the above conditions are not met, ARDOT, in consultation with the Lead Federal Agency, will review the project scope change in consultation with SHPO, the Tribes and other consulting parties following Stipulations VII and VIII.

## **VII. CONSULTATION WITH TRIBES**

- A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with the consulting Tribes. FHWA has entrusted day-to-day tasks related to tribal documentation to ARDOT. FHWA Environmental Coordinator reviews and signs all documentation sent to the consulting Tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking.
- B. If the scope of the undertaking requires Section 106 consultation, and in accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the APE shall be identified by ARDOT and invited by FHWA to be consulting parties.
- C. FHWA shall ensure that consultation with the interested Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
- D. FHWA shall ensure that consultation continues with the consulting Tribes throughout the Section 106 review process, whenever the consulting Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.

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

In addition to the previously named consulting parties, other agencies, groups, and individuals may be identified as consulting parties and can be involved as Invited Signatories or Concurring Parties, as defined by 36 CFR 800.6(c).

A. Additional Consulting Parties

1. Consulting parties shall be identified by ARDOT in consultation with the SHPO pursuant to 36 CFR 800.3(c-f) and their participation in undertakings covered under this Agreement shall be governed by 36 CFR 800.3(f)(3). Individuals and organizations with a demonstrated interest in an undertaking shall be invited by ARDOT in consultation with FHWA to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking shall be invited by ARDOT to participate in the Section 106 process.
2. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by ARDOT and FHWA in consultation with SHPO.
3. Any objections by consulting parties will be handled in accordance with Stipulation XII.B.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and ARDOT's environmental compliance procedures. ARDOT's Public Involvement Handbook provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.1(c), 800.2(d), and 800.3(e).
2. ARDOT shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800.
3. For those actions that do not routinely require public review and comment (e.g., Unscreened and Screened Projects, see Stipulation V.B), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. ARDOT shall make FHWA, SHPO, and the consulting Tribes aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to Indian tribes.
5. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party 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 fifteen (15) calendar 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.

## **IX. EMERGENCY SITUATIONS**

For the purposes of this Agreement, emergencies are defined consistent with 36 CFR 800.12 as occurrences that require emergency highway system and facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by Federal, Tribal, state, or local agencies. ARDOT may take immediate remedial action without waiting for comment if such action is necessary to prevent further escalation of the emergency by the circumstances causing it until the immediate concern is resolved.
- B. If the emergency repair project could affect historic properties, ARDOT Cultural Resources Staff shall notify FHWA, SHPO, ACHP, and the consulting Tribes, via email, prior to any work taking place. FHWA, SHPO, ACHP, and any consulting Tribe that may attach religious and cultural significance to historic properties likely to be affected will have seventy-two (72) hours to respond after receiving the notice.
- C. For projects where the repair must be made within the first thirty (30) calendar 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, ARDOT will comply with the procedures in Stipulation V of this Agreement to the extent possible. If reviews are not possible prior to the emergency work, they will be conducted after the work is completed.
- D. For projects taking longer than thirty (30) days for repair, ARDOT will comply with the non-emergency procedures.
- E. Written notification of an emergency action shall be provided to SHPO, consulting Tribes, and consulting parties, as appropriate. 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.

- F. For emergency erosion control measures, such as the placement of riprap or grout bags to prevent undermining or other major damage to bridges, dams, or roadways caused by flooding events, ARDOT will comply with the procedures in Stipulation V of this Agreement to the extent possible. If reviews are not possible prior to the emergency work, they will be conducted after the work is completed.

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

- A. Planning for Subsequent Discoveries. When ARDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, ARDOT shall include in any environmental document a plan for discovery of such properties as developed in consultation with SHPO, the consulting Tribes, and other consulting parties, as appropriate. 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.
- B. Unanticipated Discoveries
  - 1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after ARDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with Section 107.10(c) of AHTD's Standard Specifications for Highway Construction, Edition of 2014. No ground-disturbing activities will occur within a two hundred (200)-foot radius of the location of the discovery.
  - 2. ARDOT Cultural Resources Staff will inspect the work site and determine the extent of the affected archaeological resource or historic property and ensure that construction activities have halted within the buffer area. At this time, ARDOT Cultural Resources Staff will determine if the established buffer is appropriate for avoidance of the archaeological resource or historic property and may increase the buffer based on the nature of the discovery.
  - 3. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with the consulting Tribes that may attach traditional cultural and religious significance to the discovered property. ARDOT Cultural Resources Staff may reduce or increase the buffer after discussion with the SHPO, the consulting Tribes, and other consulting parties.
  - 4. ARDOT will consult with FHWA, SHPO, and the consulting 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.

- Teleconferences may be held with the appropriate consulting parties to discuss options and recommendations.
5. Upon request, the appropriate consulting parties shall be allowed to visit the site with ARDOT Cultural Resources Staff.
  6. If neither FHWA, SHPO, or a Tribe files an objection within seventy-two (72) hours of ARDOT's plan for addressing the discovery, ARDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the ACHP does not need to be notified.
  7. ARDOT shall insure that site discovery and site-specific information shall remain strictly confidential and not shared with outside parties or media.

## **XI. TREATMENT OF HUMAN REMAINS**

In the event that human remains or objects that would otherwise be considered associated and unassociated funerary objects pursuant to Native American Graves Protection and Repatriation Act (NAGPRA) are discovered during cultural resources investigations, maintenance, construction, or any other ground-disturbing activities, they will be handled in accordance with Arkansas Burial Law (Act 753 of 1991, as amended).

- A. Should human remains be encountered, work within a two hundred (200)-foot radius of the discovery will cease immediately and the location will be secured and protected from damage and disturbance. The discovery location will immediately flag or fence off and measures taken to ensure site security. The human remains shall be covered with canvas tarp. No human remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- B. ARDOT Cultural Resources Staff will inspect the work site and determine the extent of the affected human remains and ensure that construction activities have halted within the buffer area. At this time, ARDOT Cultural Resources Staff will determine if the established buffer is appropriate for avoidance of the human remains and may increase the buffer based on the nature of the discovery.
- C. ARDOT shall immediately notify the office of the Chief Medical Examiner, SHPO, and FHWA. The medical examiner will make the official ruling on the nature of the remains, being either forensic or unevaluated resources.
- D. If human remains are determined to be Native American, a plan for their avoidance or recovery shall be generated in consultation with SHPO and the consulting Tribes, FHWA, and ARDOT. The preferred plan shall be avoidance. If no feasible avoidance plan can be developed to allow the human remains and/or funerary objects to stay in place, in consultation with interested Tribes and SHPO, ARDOT will engage in the development of a site-specific disinterment/re-interment plan. Teleconferences may be held

- with the consulting parties to discuss options and recommendations. ARDOT Cultural Resources Staff may reduce or increase the buffer after discussion with the appropriate consulting parties. No photo documentation shall be done without permission from the Tribes. Upon request, the consulting parties shall be allowed to visit the site with ARDOT Cultural Resources Staff.
- E. If human remains are determined to be non-Native American, consultation with SHPO and other appropriate parties will be required to determine a plan of action.
  - F. ARDOT will communicate the procedures to be observed under this stipulation to all consultants and employees along with the penalties stipulated by NAGPRA when on federal or tribal lands or the Arkansas Burial Law when on state or private lands.

## **XII. ADMINISTRATIVE STIPULATIONS**

### **A. Annual Review and Monitoring**

1. ARDOT will prepare a written report that includes, but is not limited to, summaries in tabular form that includes specifying project numbers, names, locations, and types, and all findings pursuant to 36 CFR Part 800 that were processed by ARDOT for the calendar year under review pursuant to Stipulation V.B in this Agreement. The initial report shall be prepared following the completion of the first full calendar year under this Agreement.
2. The report will also describe accomplishments/successes achieved over the course of the year as well as suggestions for improvements. ARDOT shall submit the annual report to FHWA, the SHPO, and ACHP no later than March 31 of each following year unless the signatory parties agree to amend the reporting schedule.
3. FHWA, ACHP, and SHPO may monitor activities carried out pursuant to this Agreement. ARDOT will cooperate with these parties in carrying out their monitoring efforts.
4. ARDOT will organize an annual meeting with FHWA and SHPO to discuss the status of all Section 106 Memoranda of Agreements and Programmatic Agreements. The meeting will take place by April 30 of each calendar year of the duration of this Agreement.

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

1. Should any signatory party object in writing to 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.
2. If the objection is resolved through consultation, FHWA may authorize the

- disputed action to proceed in accordance with the terms of such resolution.
3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP and other signatory parties, including FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation in accordance with 36 CFR 800.11, ACHP shall exercise one of the following options:
    - i. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
    - ii. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
    - iii. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
  4. Should ACHP not exercise one of the foregoing options within thirty (30) calendar days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
  5. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
  6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this stipulation.
  7. 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.

### **XIII. 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.



#### **XIV. TERMINATION**

- A. Any Invited Signatory to this Agreement may terminate their signatory status by providing thirty (30) calendar days-notice in writing to the other parties explaining the reason for withdrawing their participation in this Agreement, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination of their participation. In the event of this termination, FHWA shall ensure that other Signatories are aware of this withdrawal and shall proceed in accordance with 36 CFR 800.3-800.6 for any Invited Signatory that withdraws their participation in this Agreement. The Agreement will remain valid only upon written concurrence of all other signatory parties.
- B. Any party to this Agreement may terminate the Agreement by providing thirty (30) calendar days-notice in writing to the other parties explaining the reason for termination, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination. In the event of termination, FHWA shall ensure that undertakings shall be reviewed individually in accordance with 36 CFR 800.3-800.6 that were previously covered by this Agreement.

#### **XV. CONFIDENTIALITY**

All parties to this Agreement acknowledge that information about historic properties, unevaluated historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if ARDOT 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.

#### **XVI. DURATION OF AGREEMENT**

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect unless it is terminated prior to that time pursuant to Stipulation XIV of this Agreement. No later than ninety (90) calendar days prior to the conclusion of the five (5) year period, ARDOT will notify all parties in writing. If there are no objections or amendments from the signatory parties, the term of this Agreement will automatically be extended for an additional five (5) years. If any party objects to extending the Agreement or proposes amendments, ARDOT will consult with the parties to consider amendments or other actions to avoid termination.

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

DRAFT

Signatory

**FEDERAL HIGHWAY ADMINISTRATION**

\_\_\_\_\_  
Vivien Hoang  
Arkansas Division Administrator

\_\_\_\_\_  
Date

DRAFT

Signatory

**ARKANSAS STATE HISTORIC PRESERVATION OFFICER**

\_\_\_\_\_  
Director Scott Kaufman  
Arkansas State Historic Preservation Officer

\_\_\_\_\_  
Date

DRAFT

Signatory

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

\_\_\_\_\_  
Reid Nelson  
Executive Director

\_\_\_\_\_  
Date

DRAFT

Invited Signatory

**ARKANSAS DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Lori H. Tudor, P.E.  
Director

\_\_\_\_\_  
Date

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## APPENDIX A

### UNSCREENED PROJECTS EXEMPT FROM SECTION 106 REVIEW

Unscreened Projects are actions that have minimal potential to affect historic properties and are exempt from Section 106 review when ARDOT Cultural Resources Staff determine the below activities apply. To be applicable, an undertaking must be limited to the actions specified below. These projects are stand-alone transportation activities that, based on the Signatories' and Invited Signatories past experience with similar actions, will not result in impacts to cultural resources. ARDOT Cultural Resources Staff will document its finding in the project file as specified in Attachment 1 and produce an annual report of Unscreened Projects, as specified in Stipulation XII.A.

- A. General pavement marking, line painting, or installation of sensors on existing pavement.
- B. Pothole filling, crack sealing, and joint repair.
- C. Pavement overlay, milling or grooving, grinding, and resurfacing of roadways and non-NRHP bridges within the previously disturbed right-of-way (ROW).
- D. Surface treatments or sealcoats and chip sealing and sealing.
- E. Repair or in-kind replacement (essentially the same size, material, color, and texture) of curbs, curbing, and sidewalks, including street furniture, highway signage, and existing traffic signals (no new underground work).
- F. New pavement markings or replacement of pavement markings (normal or raised), rumble strips, traffic sensors, snow and ice detectors, or other similar features on existing ramps and roadways.
- G. Beam end and bearing repair of non-NRHP bridges.
- H. Bridge deck hydrodemolition, rehabilitation, and stabilization for non-NRHP bridges.
- I. Removal, replacement, or installation of utilities and conduits that do not require modifications to the bridge structure. Applies only to non-NRHP bridges.
- J. Substructure alterations where the work is confined to non-NRHP bridges.
- K. Pothole patching, painting, concrete sealants, expansion joint replacement, and other maintenance activities that will not affect the appearance or alter significant structural elements. Applies only to non-NRHP bridges.
- L. Off-site Locations that have been previously approved or utilized in the past or currently for similar activities as defined below, are located on existing gravel or paved lots or areas where fill material has been placed, and/or utilizing structures that are not fifty years old or older or have been previously evaluated as not eligible to the NRHP. Off-site Locations are defined in Section 107.10(c)(2) of AHTD's Standard Specifications for Highway Construction, Edition of 2014 as borrow pits, waste areas, haul roads, equipment and material storage or stockpile areas, and field offices. Off-site Locations facilitate the construction of a project by providing areas to borrow or waste dirt/materials, store equipment or stockpile material for use, and have an on-site field office.

## APPENDIX B

### SCREENED PROJECTS NOT REQUIRING SHPO REVIEW

Screened Projects are those highway projects that are unlikely to affect historic properties. The projects, following appropriate screening, may be determined exempt from further review or consultation under this Agreement because they have been determined to result in a finding of no historic properties affected as defined in 36 CFR 800.4(d). Screened Projects require internal review by ARDOT Cultural Resources Staff to determine if a project meets all of the terms and conditions in Appendix B and that no particular circumstances exist that would call for additional review. If no such circumstances exist, ARDOT Cultural Resources Staff will document its finding in the project file as specified in Attachment 1 and produce an annual report of Screened Projects, as specified in Stipulation XII.A.

ARDOT Cultural Resources Staff assesses previously disturbed areas of ground in relation to highway infrastructure, construction practices, available plans, vertical and horizontal extents, signs of excavation and/or fill, natural and unnatural contours, existing utilities, and review of site and structure records, historic maps, and aerial imagery.

Ground disturbance is defined as any work or activity that results in disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.

The actions taken outside of the listed activities and their likely effects to historic properties will be considered per 36 CFR 800.16(d). All work should take place within the existing ROW and/or Temporary Construction Easement. In addition, no activity can involve the acquisition of additional right-of-way (ROW) unless otherwise specified in an activity below. Screened projects adhering to these procedures are listed as follows:

#### **Interstate Related Projects**

1. Interstate bridge or roadway projects (excluding air rights development) where all work occurs within the previously disturbed areas of the existing ROW. Applies to NRHP-evaluated bridges on file at ARDOT.

#### **Roadway Related Projects**

2. Reconstruction activities within the previously disturbed areas of the existing ROW. Reconstruction activities may include roadway restoration and/or rehabilitation; repair, replacement or resetting of existing guardrail (wood or weathering steel guardrail to be consistent with that existing); widening less than one full travel lane; addition of shoulders; construction of cross-overs on median strips; and addition or extension of emergency turnouts.
3. Correcting substandard roadway geometrics and intersections, provided that such improvements do not extend beyond the limits of previously disturbed areas of the existing ROW or acquisition of additional ROW for projects within an urban setting. These improvements would include but are not limited to roundabouts; turn lanes; improved turning radii; traffic channelization, divisional, and refuge islands; acceleration/deceleration lanes; and installation



- of curbs and gutters. An urban setting is defined as areas within city limits that have existing built environment infrastructure (for example, an intersection with associated landscaping, utilities, parking lots, and buildings).
4. Extension of curbs, curbing, and sidewalks, including street furniture. Minor modifications in size, locations, content, and material composition of these features are permitted as well as installation of new curbs, gutters, sidewalks, street furniture and landscaping within previously disturbed areas.
  5. Modifications to sidewalks and curbs to satisfy the requirements of the Americans with Disabilities Act.
  6. Modification and/or installation of man-made features, such as fences, gates, slopes, ditches, driveways, and dikes within previously disturbed areas of the existing ROW or adjacent to the existing ROW (restricted to the use of TCEs).
  7. Removal of vegetation and trees within the existing ROW for the purposes of maintaining and/or restoring visibility of the roadway.
  8. Installation of new underground utilities or the replacement/repairing of existing underground utilities within previously disturbed areas of the existing ROW.
  9. The in-kind replacement or relocation of existing utility poles between the edge of the sidewalk and roadway.
  10. Rehabilitation, reconstruction or refurbishing of existing active at-grade railroad crossings or separations, including installation of railroad warning signs and devices, such as flashing lights and new crossing gates.
  11. Roadway resurfacing that intersects existing railroad crossings where work is limited to re-paving only. Applies to both NRHP eligible and non-eligible railroad resources and where crossing material is already in place. Also applies to railroad resources in historic districts where crossing material is already in place and is being replaced with in-kind materials.

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

Items 12 through 18 only refer to the structures (bridges/culverts) as being exempt from further review and not the archaeology portion, if such investigations are warranted.

12. Bridge deck rehabilitation and stabilization for NRHP bridges.
13. Removal, replacement, or installation of utilities and conduits that do not require modifications to the bridge structure. Applies to NRHP bridges.
14. Substructure alterations where the work is confined to the NRHP bridge, and no impacts to the historic integrity of the NRHP bridge occurs.
15. Pothole patching, painting, concrete sealants, expansion joint replacement, hydro-demolition, and other maintenance activities that will not affect the integrity or alter significant structural elements. Applies to NRHP bridges.
16. All bridge/culvert related work, up to and including replacement of bridges, which are not 45 years of age, or for those 45 years of age or older with a NRHP eligibility determination of "Not Eligible" on file with ARDOT and SHPO.
17. All bridge/culvert related work, up to and including replacement of concrete slab and steel stringer bridges that conform to the *Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and*

*Steel Bridges* (77 FR 68790) and have a NRHP evaluation form on file at ARDOT.

18. All bridge/culvert related work, up to and including replacement of all concrete and/or steel bridge/culvert superstructures with no more than a 20-foot span length with an APE wholly confined to disturbed soils.

#### **Roadside Safety Related Projects**

19. Highway safety improvement activities, including installation, replacement, repair, modification, or removal of traffic control devices and safety appurtenances, such as impact attenuators, median glare screens, roadway delineators, guardrails, and safety barriers. These improvements may also include pole countermeasures (reflectors, breakaway devices, and shielding systems), installation of panel mounted reflective object markers, installation of reflective object markers not mounted on panels, and removal of fixed objects (utility poles, non-breakaway signs, and pipe headwalls).
20. Repair or reconstruction of erosion control and protection measures, such as slope stabilization, slide repair, rip-rap, retaining walls, and/or streambank stabilization.

#### **Drainage Related Projects**

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

#### **Electrical Related Projects**

24. Traffic Signal Projects that involve existing traffic signal upgrades or replacement or new traffic signals where all work occurs within previously disturbed areas of the existing ROW or acquisition of additional ROW for projects within an urban setting. An urban setting is defined as areas within city limits that have existing built environment infrastructure (for example, an intersection with associated landscaping, utilities, parking lots, and buildings).
25. Intelligent Transportation System Projects (except for NRHP eligible or listed bridges, districts, or properties), such as installation of ramp metering systems; installation of closed circuit television cameras or highway advisory radio systems, support structures; and installation of computer links to monitor and control traffic volumes throughout the roadway system.

### **Roadway Related Facilities Projects**

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

### **Bicycle/Recreational/Pedestrian Projects**

27. Projects involving construction or addition of bicycle lanes, recreational trails, pedestrian walkways, shared use paths, and associated facilities provided that work is confined to areas of previous ground disturbance.

### **Lighting and Signing Projects**

28. Restoration, replacement, upgrading, or addition of highway lighting systems (includes under-deck, conventional, high mast and offset lighting systems) on controlled access highways. For other highways, in-kind replacement or repair of highway lighting systems (essentially the same size, material, color or texture).
29. Installation or replacement of highway signs (including overhead and electronic variable message signs) on controlled access highways. For other highways, in-kind replacement or repair of highway signs (essentially the same size, material, color or texture).

### **Miscellaneous Projects**

30. Off-site Locations that have been surveyed in accordance with Appendix B of the State Plan: Guidelines for Fieldwork and Reporting Writing (updated 2010), and no cultural resources were identified during fieldwork and therefore no historic properties will be affected. Off-site Locations are defined in Section 107.10(c)(2) of AHTD’s Standard Specifications for Highway Construction, Edition of 2014 as borrow pits, waste areas, haul roads, equipment and material storage or stockpile areas, and field offices.
31. Removal and disposal of any hazardous waste materials from the existing ROW.
32. Replacement or repair of highway fencing, median barriers, and safety barriers where the location is unchanged.
33. Emergency repairs under 23 USC § 125 necessary to restore essential travel, minimize the extent of damage, or protect the remaining facilities.
34. The installation of noise barriers or retaining walls within the previously disturbed areas of the existing ROW to provide for noise reduction.
35. Projects involving purchase, acquisition, or release of property without associated ground-disturbing activities, such as mitigation areas or surplus property.

36. Electric Vehicle Supply Equipment (EVSE) Levels 1-3 charging stations for areas with existing parking facilities and that meet the conditions defined by the 2022 ACHP exemption (87 FR 66201).

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**ATTACHMENT 1**

**STANDARD OPERATING PROCEDURES FOR ARKANSAS DEPARTMENT OF  
TRANSPORTATION'S CULTURAL RESOURCES PROJECT DOCUMENTATION**

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# **STANDARD OPERATING PROCEDURES FOR ARKANSAS DEPARTMENT OF TRANSPORTATION'S CULTURAL RESOURCES PROJECT FIELDWORK AND DOCUMENTATION**

## **I. INTRODUCTION**

The Standard Operation Procedures (SOP) describe the process to be performed by Arkansas Department of Transportation (ARDOT)'s Cultural Resources staff for identifying, evaluating, and documenting Federal Highway Administration (FHWA) undertakings pursuant to Section 106 of the National Historic Preservation Act (NHPA), as amended (54 U.S.C. § 306108) and its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800.

In addition, the SOP addresses internal ARDOT processes and documents either submitted early in the planning process or for construction. Fieldwork should be done in accordance with Appendix B of the State Plan (Early et al. 2010). All documentation should be adjusted to the resource or historic property involved, project requirements, or requests made by ARDOT, the FHWA, the Arkansas State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), Federally-recognized Indian tribes (Tribes), or other invested parties as appropriate. The SOP will be a continuously evolving document as new changes are made or requested by consulting parties.

## **II. BACKGROUND**

Two previous Memoranda of Agreement covered a short report form known as a Project Identification Form (PIF) in 1992 and exempted categories for projects not considered undertakings in 1999. This SOP clarifies the procedures and documentation associated with the current Section 106 Programmatic Agreement (Agreement). The Agreement superseded the two MOAs once it was executed on February 18, 2021. Any amendment shall superseded the previous 2021 Agreement.

### III. EXEMPTED PROJECTS

ARDOT's Cultural Resources staff shall conduct an examination of preliminary project plans or requests and determine if the project (or activities) constitutes an exempted undertaking under Stipulation V.B and Appendix A or Appendix B of the Agreement.

- 1) If the project constitutes an exempted undertaking and Appendix A activities apply, an Interoffice Memorandum (IOM) will be prepared and put into the project file in accordance with Stipulation V.B.1 of the Agreement. The IOM should be limited to the following documentation:
  - a) Brief project description;
  - b) Reference to the Agreement and exempted work category or categories.
  
- 2) If the project constitutes an exempted undertaking and Appendix A activities do not apply, a records and map review should be conducted of the Arkansas Archeological Survey's (ARAS) Automated Management of Archeological Site Data in Arkansas (AMASDA) site files, the Arkansas Historic Preservation Program's (AHPP) structure database, and various maps sources listed below to determine if known historic properties are present on or adjacent to the project or proposed activity. Historic properties, defined by 36 CFR 800.16(l)(1), are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP).

If historic properties are not recorded or identified as part of a field visit, as applicable, and previously disturbed ground is applicable, then the project constitutes an exempted undertaking and Appendix B activities apply. A Phase I archeological and architectural survey will not be required. An IOM will be prepared and put into the project file in accordance with Stipulation V.B.2. The IOM should be limited to the following documentation:

- a) Brief project description;
- b) Review and results of records and map review of the ARAS and AHPP databases and general maps, including General Land Office (GLO) survey

plats, 1936 county highway maps, topographic quadrangle maps, aerials, and other applicable sources; and

c) Reference to the Agreement and exempted work category or categories.

The IOM is distributed to the Section Head, or if the Section Head is absent, to the Lead Cultural Resources Specialist for review and then to the Assessments Section. All projects that are processed under Stipulation V.B of the Agreement are included in an annual project excel spreadsheet and report per Stipulation XII.A of the Agreement.

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#### IV. PROJECTS REQUIRING REVIEW

Some projects that typically fall under Stipulation V.B of the Agreement are excluded because of recorded or identified historic properties and/or minor amounts of additional right-of-way (ROW) acquisition. Field work may be necessary to address the historic properties in or adjacent to the proposed activities or to address the additional ROW acquisition.

The standard SHPO Letter will be prepared to address the historic property or minor ROW acquisition for projects that typically would fall under Stipulation V.B of the Agreement. The documentation shall include the following information:

- 1) Project Description
  - a) Brief summary of project type with limits of job
  - b) A topographic quad map of the project location, referenced as Figure 1
  - c) Whether confined to existing roadway or highway ROW or acreage amount of ROW acquisition
  - d) A aerial map showing ROW acquisition, if applicable, referenced as Figure 2
  - e) Reference to Agreement as not being applicable and why
- 2) Project Results for Adjacent Historic Properties
  - a) Records and map review results of ARAS and AHPP databases and GLO survey plats, 1936 county highway maps, topographic quadrangle maps, aerials, and other applicable sources
  - b) Brief historic property description and location in relation to the project with the statement “will not be impacted physically, audibly, or visually by the nature of this undertaking” and “will not affect historic properties” and why shovel tests were not excavated
- 3) Project Results associated with ROW acquisition
  - a) Records and map review results of ARAS and AHPP databases and GLO survey plats, 1936 county highway maps, topographic quadrangle maps, aerials, and other applicable sources
  - b) Field visit, if applicable, and if shovel testing was done or not and why
  - c) Photographs of area, if applicable

4) Summary and Conclusion

- a) Statement should be “No historic properties will be affected by the proposed project. No further work is recommended.”

The SHPO letter is submitted to the Section Head, or if absent, to the Lead for review. Documentation will then be sent to SHPO through the administrative assistant. The documentation will be submitted to SHPO after it has been reviewed and signed by the Division Head or Assistant Division Head. If comments need to be addressed, then the document will be sent back for corrections, and the staff will resubmit the corrected version to the Section Head, who will submit as described above. If time constraints prevent further review and editing, the Section Head may deem it appropriate to proceed with sending it to SHPO.

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## V. METHODOLOGY TO IDENTIFY AND EVALUATE HISTORIC PROPERTIES

The process outlined in the following section meets compliance with Section 106 of the NHPA, its implementing regulations, and Appendix B of the State Plan (Early et al. 2010). Coordination and relaying information to other sections are essential to the function of the Environmental Division (Note: All maps should be produced by the GIS/Data Management Section using a predetermined standardized format.) Examples of documentation can be found at \\san1\gis\_share\ARCH\Templates & Examples Documents.

- 1) Identify and notify consulting parties that might want to participate in Section 106 as early as possible in the planning process, such as the appropriate Native American tribes, federal and state agencies, local governments, or municipalities.
- 2) The Native American consultation should be patterned as follows:
  - a) The appropriate consulting Tribes are found in a PDF titled "TribeCoordinationbyCounty" in the \\san1\gis\_share\ARCH\Native American coordination or ARDOT's internal webapp. Other tribes (besides those included in the PDF) may need to be contacted as applicable to the location of the project.
  - b) GIS will provide the standard project location map on topographic quad map with latitude and longitude coordinates and the township, range, and section to attach to FHWA's Native American Consultation Letters (NACL).
  - c) The NACL template should have the correct date, job reference, project description, tribal representative, address, archeological site review (include site numbers), and FHWA Environmental Coordinator's phone number and signature, currently Randal Looney. The NACL letters for all the Tribes should be in one single Word file.
  - d) The NACL and map shall be submitted to the Section Head or Lead for review, who will then forward the letters to the FHWA Environmental Coordinator for signature. Upon receipt of the signed letters, the NACL and

maps will either be mailed or sent electronically to the Tribes for a 30-day review period.

- e) The Tribal response letters should be filed with the job number as “nain”. The information provided by the Tribes, based on their review of existing records or databases, should be addressed accordingly as part of the cultural resources survey and subsequent documentation (reports or Native American Continuing Consultation [NACC]).
  - f) If a Tribe requests a copy of the cultural resources survey documentation or additional information, please submit a NACC with the appropriate information addressed and sent through the above process for review, signature, and distribution.
- 3) Establish the Area of Potential Effect (APE) based on preliminary survey plans or consultation with the appropriate parties. The APE, defined by 36 CFR 800.16(d), is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. Remember to include proposed survey corridor or a map of proposed design plans (if available) to show the APE boundary in the cultural resources survey documentation for the proposed undertaking. The architectural historian and archeologist should work together to establish an APE to address both above-ground and below-ground resources.
  - 4) Perform a preliminary records check of the ARAS, AHPP, and ARDOT internal databases for previously identified historic properties and check Tribal responses for identified cultural resources/historic properties or areas of concern.
  - 5) Perform map reviews of GLO survey plats, 1936 county highway maps, topographic quadrangle maps, aerials and other applicable sources to assess unidentified historic properties, structures, cemeteries, and high probability areas.
  - 6) Perform a field visit to identify initial constraints and assess potential historic properties within or near the proposed APE. Indirect effects should be taken into account when assessing potential historic properties. Indirect effects are defined as changes to the character or setting of property that contribute to its historic

significance and are often related to but not limited to audible, atmospheric, and visual effects or view shed issues. The architectural historian and archeologist should work together to accomplish this task.

- 7) A structural survey of properties 45 years old or older should follow the standards and procedures in the Attachment 1A for Architectural Resources Survey (ARS) documentation.
- 8) Properties should be evaluated according to National Register Bulletin No. 15, "How to Apply the National Register Criteria for Evaluation" (National Register Bulletin 1997), 36 CFR 60.4, and 36 CFR 800.4. Also, be aware that exceptions, noted as Criteria Considerations in National Register Bulletin No. 15, may be applicable to certain kinds of properties not typically evaluated as part of the project.
- 9) The archeologist shall submit the ARS and maps to the architectural historian for review. Once edits are received back from the architectural historian, the archeologist shall submit the edited ARS and maps to the Section Head for review.
- 10) ARDOT shall submit the ARS results of identification and evaluation of potential historic properties to SHPO for a 30-day review period.
- 11) If additional properties are identified after the original ARS submittal, an Addendum ARS shall be completed and submitted to SHPO for review.
- 12) For properties already listed on the NRHP, the boundary should be included as part of the ARS and constraints map. If a property is considered eligible, a boundary needs to be established based on its significance, contributing features, and aspects of integrity in consultation with an architectural historian on staff. The architectural historian shall provide the archeologists all applicable constraints in relation to historic structures.
- 13) Identify constraints from the records check, a windshield assessment, and SHPO concurrence of eligibility calls from the ARS. Constraints should be verifiable cultural resources (undetermined and eligible archeological sites shown in AMASDA or NRHP properties shown on the AHPP database). Other resources, such as a destroyed archeological site or an unknown cultural resource only

shown on a historic map [i.e. GLO fields], may be mentioned in the constraints memo without being shown on the constraints map, if its presence cannot be verified within the project area prior to the constraints request deadline. An early Phase I survey may be applicable for certain projects or for high probability areas to plan for avoidance alternatives.

- 14) On the constraints map, archeological sites should be noted as “Environmentally Sensitive Areas”; listed or eligible NRHP properties as “Historic Property”; “Historic District” noted separately; and “Cemetery”, “Burials”, and “Historic Marker”, referred to as such.
- 15) The constraints map and memo are sent to the Section Head for review and disseminated through the administrative assistant to the Assessments Section. Assessments staff will compile the information from the Cultural Resources and Natural Resources Sections to send to the Roadway Design Division. The process for constraints provides Roadway Design Division an opportunity to avoid and/or minimize impacts to a cultural resource or historic property in the early design phase.
- 16) Once the proposed survey corridor or proposed design plans are received and the APE is reassessed, a Phase I archeological survey may occur if it has not already been completed. All fieldwork should conform to the guidelines in Appendix B of the State Plan (Early et al. 2010).
- 17) SHPO concurrence should be acquired well before the Environmental Estimated End Date, as indicated on the Staff Minutes, to allow for Assessments to meet this deadline.
- 18) If previously recorded sites and/or new sites are identified within the APE, whether determined eligible or not eligible for the NRHP, then a PIF or a Cultural Resources Survey Report may be done for the undertaking, depended on the site type and nature. All sites shall be assessed in accordance with “How to Apply the National Register Criteria for Evaluation” (National Register Bulletin 1997), 36 CFR 60.4, 36 CFR 800.4, and guidelines set forth in the *State Plan* (Davis 1994).

- 19) Staff shall perform archaeological or historic architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the SOI's *Standards and Guidelines for Archeology and Historic Preservation: Identification* (1983, as revised in the 48 FR 44716) and "Appendix B of the State Plan: Guidelines for Archeological Fieldwork and Report Writing in Arkansas". If an archeological or historic architectural survey is performed, the appropriate documents will be completed and submitted to SHPO and consulting Tribes, as applicable, for review and comment.
- 20) These steps are a guideline and at any time may need modification or done in different sequences to accommodate a certain job or time restrictions.

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## VI. DOCUMENTATION FOR UNDERTAKINGS WITH NO HISTORIC PROPERTIES IMPACTED

In Stipulation V (1-19) of this SOP, the methodology should be followed to identify and evaluate historic properties for a proposed project. If no previously recorded or identified historic properties are present or are present but will not be adversely effected by the project, a PIF will be prepared in compliance with the Agreement and include the following sections and information:

### 1) Project Description

- a) Include a summary of project type with length of job, highway and county, description of amount of proposed ROW, Temporary Construction Easements (TCE), and other pertinent plan information.
- b) Project Location Maps should include a topographic quadrangle map (Figure 1) and a proposed design plan map or proposed survey corridor (Figure 2), which shows the defined APE.

### 2) Project Location

- a) description of ecoregion location (appropriate reference)
- b) archeological region (appropriate reference)
- c) description of soil association (appropriate reference)
- d) local project environment

### 3) Project Methods

- a) The description of records check of ARAS and AHPP and map reviews of GLO survey plats, 1936 county highway maps, topographic quadrangle maps, aerials, and any other relevant sources
- b) The NACL sent out and any Native American responses should be designated as an attachment, if there is only one; or Appendix A if there is a second Appendix.
- c) A description of fieldwork performed and abbreviated report based on guidelines in Appendix B of the State Plan (Early et al. 2010) and consisting of archival review, structural survey, and Phase I survey.



- d) Shovel testing methodology, including intervals, depths, widths, and ¼ inch screening
- 4) Project Results
- a) Records check results
  - b) Brief ARS description and eligibility determination. SHPO concurrence should be noted as Appendix B. If structures are eligible or listed on the NRHP but will not be adversely affected by the project, provide a brief written description of why it is NRHP eligible or listed and a historic property map showing the property in relation to the design plans to prove that finding.
  - c) Map review results
  - d) Survey conditions of negative shovel tests or reasons why shovel tests were not applicable for certain locations with photographs
  - e) The soil profile, characteristics, and Munsell color value description with a photograph of a typical shovel test (any photograph and figure title should be centered with a border; the figure title should be bold).
  - f) A statement that the field survey failed to identify any artifacts or features or new historic or Native American sites.
- 5) Summary and Conclusion
- a) Restate project description and nature of project.
  - b) Restate brief sentence of negative field survey results.
  - c) Closing statements should be “No historic properties will be impacted by the project. No further work recommended.”
  - d) Standard paragraph for discovery situation following the Arkansas State Highway and Transportation Department’s Standard Specifications for Highway Construction.
- 6) Header and Footer
- a) The Header should have “Project Identification Form” above the header line.
  - b) The Footer should have the “Job Number...” aligned left and a page number aligned right (not Page 1 of 2). Both should be below the footer line.
- 7) PIF cover page
- a) The fillable Portable Document Format (PDF) has boxes to fill in or check.

- b) The SHPO cover letter, PIF cover page, and PIF should all have the same information.

The SHPO cover letter, PIF cover page, PIF, and other applicable documents are submitted to the Section Head or Lead for review. If no major edits are proposed, corrections will be made and the documentation will then be sent to SHPO through the administrative assistant. The staff will be copied on the email to the administrative assistant with the final edited version to use for reference. The documentation will be submitted to SHPO after it has been reviewed and signed by the Division Head or Assistant Division Head. If comments need to be addressed, then the Section Head will send the documents back for corrections, and the staff will resubmit the corrected version to the Section Head and submitted as described above. If time constraints prevent further review and editing, the Section Head may deem it appropriate to proceed with sending it to SHPO.

## VII. DOCUMENTATION FOR UNDERTAKINGS WITH HISTORIC PROPERTIES IMPACTED

In Stipulation V (1-19) of this SOP, the methodology should be followed to identify and evaluate historic properties for a proposed project. If previously recorded archeological sites and/or new sites are identified within the APE, whether determined eligible or not eligible for the NRHP, then a Cultural Resources Survey (CRS) Report will be done for the undertaking. If a previously recorded or identified historic property adversely effected by the project, a CRS Report will be prepared in compliance with Section 106 of the NHPA, 36 CFR Part 800, and the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation" (48 Federal Register 44716–44742) and in accordance with the guidelines in Appendix B of the State Plan (Early et al. 2010). Exceptions can occur with documentation types, such as a historic bridge impacted can be addressed according to Stipulation VI of this document as long as the archeological survey is negative. A report should be tailored to the nature of the undertaking, the study area, and the type of resource impacted and should include the following sections, subsections, and information:

- Report Cover Page with name of author and month/year
- Header and Footer
  - a) The header should have "Cultural Resources Survey Report" above the header line.
  - b) The footer should have the "Job Number..." aligned left and a single page number or appropriate numeral (ABSTRACT and below) aligned right. Both the job and page numbers should be below the footer line.
- **ABSTRACT**  
Brief synopsis of project and results
- **TABLE OF CONTENTS**  
Should be linked to the headings and subheadings in the report
- **LIST OF FIGURES, LIST OF TABLES, AND LIST OF APPENDICES**  
The figures and tables should be hyperlinked to the appropriate title in the report text. Make sure all the figures and tables are referenced in the body of the report.

- **INTRODUCTION**

Personnel, investigation procedures, days of fieldwork

Project Description

a) Project type with length of job, highway and county; defined APE with the description of proposed ROW, TCE, and other pertinent plan information

Project Location Maps should include a topographic quadrangle map (Figure 1) and a proposed design plan map or proposed survey corridor (Figure 2), which shows the defined APE. Figures with multiple pages should be labelled as such, ex. "Figures 2-1 and 2-2." If the project is too large and multiple aerial maps are required, the plans may be overlain on the topo maps shown in Figure 1 instead of having multiple Figure 2 maps. GIS will present options to see if the topo map clearly depicts the APE. Local Environment

b) Description of ecoregion location (Woods et al. 2004) with project location shown on Ecoregions of Arkansas map.

c) Description of soil association (with appropriate reference to soil survey book)

d) Local project environment (photographs); (any photograph and figure title should be centered with a border; the figure title should be bold)

e) Optional (water source, climate)

Past Environment

Past reports have this section already written; use and update as needed.

Culture History

a) Past reports have this section written; use and update as needed. If the impacted historic property is historic and not prehistoric, do not have an exhaustive prehistory section and vice versa.

b) Identify the archeological region location (appropriate reference-Davis 1994) with project location shown on Archeological Regions of Arkansas map and references used for the overview of that region with the following subsections: *Paleoindian Period, Dalton Period, Archaic Period, Woodland Period, Mississippian Period, Protohistoric Period/Historic Indian Occupation, Historic Settlement, and Local History.*

- **PROJECT METHODS**

- Records Check/Literature Search

- Records check of ARAS and AHPP databases, map reviews of GLO survey plats, 1936 county highway maps, topographic quadrangle maps, and any other relevant historic map and the results. Provide a *historic map figure* with project location if it pertains to the site or historic property recorded.

- Previous Archeological Investigations

- Check of Automated Management of Archeological Site Data in Arkansas (AMASDA) for projects; only mention those that intersect or are adjacent to the project area.

- Native American Consultation

- Native American consultation sent out and any responses returned should be included in Appendix A.

- Architectural Resources Survey

- ARS description should be included along with the eligible or listed structures; if impacted by project; and if property will be discussed later in the report. ARS SHPO concurrence needs to be attached as Appendix B. (Note: the ARS does not need to be attached).

- Pedestrian Survey Methods

- a) Fieldwork and report writing followed the procedures and guidelines of:

- i. Advisory Council on Historic Preservation's (ACHP) "Protection of Historic Properties" (36 CFR Part 800)
    - ii. Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation" (48 Federal Register [FR] 44716–44742)
    - iii. Appendix B of the Arkansas State Plan: Guidelines for Archeological Fieldwork and Report Writing in Arkansas Guidelines (Early et al. 2010).
    - iv. The Principal Investigator for the project meets the Secretary of the Interior's "Professional Qualification Standards for Archeology and Historic Preservation" (48 FR 44738-44739).

- b) Methods used in the field and lab

- v. Number of field days

- vi. 20-meter interval shovel tests, diameter and depth, screened ¼-inch mesh, etc.

#### Obstacles and Limitations

- a) Vegetation restrictions, any limitations that prohibited shovel testing (utilities, pavement, etc.), urban development
- b) Secondary project impacts such as off-site locations

#### Lab Work and Analysis

- a) If a site is recorded or revisited, reference completed site form or revisit form submitted to ARAS Registrar's Office with temporary site number and/or site number. If artifacts were found, reference the artifact analysis method conducted. Also include the assigned accession and site number and that artifacts will be transferred to ARAS curation facility. If no artifacts were found associated with a site, then state that.

#### Historic Property and Site Evaluation

- a) Evaluation of a property followed the National Register Bulletin No. 15, "How to Apply the National Register Criteria for Evaluation" (National Register Bulletin 1997). There are four criteria for determining the significance of a resource and its eligibility for the NRHP (36 CFR Part 60.4). The property must not only be significant under the NRHP criteria but also must retain sufficient aspects of integrity, which include location, design, setting, materials, workmanship, feeling, and association.
- b) Also guidelines and characteristics listed in the *State Plan* (Davis 1994) and by the ACHP (36 CFR Part 800) were applied for site data and evaluations.

#### • **PROJECT RESULTS**

The area to be investigated is determined by the amount and area of potential impact of a proposed project (Early et al. 2010:8). An intensive survey of the APE should be conducted with closely spaced shovel tests. Specify in this section the number and general location of shovel tests; restrictions of survey; typical soil profile description (*with photograph*) for each soil type found in project area; results of shovel tests (i.e. if negative-no artifacts or cultural features identified; if positive-

see site description below); then outline the historic property and/or site with the following descriptive sections:

- a. **Historic Property Name (Number of Property)** – If the historic property is impacted, then include these sub-sections:

**Property Description** – history, eligibility determination, significance, and property boundary (*photograph* and *map* of property with delineated property boundaries and proposed design plans)

**Fieldwork** – specify how many shovel tests were done within the NRHP boundary and if negative results; if positive results, describe shovel tests and whether recorded as a site or was already recorded as a site and have description of site in separate section

**Anticipated Impacts** – assess direct effects (amount of acreage to be acquired versus total acreage of historic property) and indirect effects (visual, audible, etc.) with APE

**Recommendations** – no adverse effect; or adverse effect and mitigation required and stipulated in a MOA with mitigation measures explained

- b. **New Site Recorded or Revisited Site** – If a new site is recorded or a previously recorded site is revisited, include the following information:

All points in the site form, such as the ARAS Site Number, Temporary Site Number, Site Type, Cultural Affiliation, Approximate Site Size, Soil Type, Topographic Setting, USGS Quadrangle, Nearest Water, Survey Method, Ground Cover/Site Condition with the following sub-sections:

**Discussion** – site description and *photograph* of site area (site form included in last appendix)

**Component Analysis** – total of shovel tests and number of positive shovel tests (should include *sketch map* with location of shovel tests); how delineated, at what intervals, soil profile description (provide *photographs*), artifact count and descriptions (provide table either in text or appendix); Phase II testing should include the number of excavated test units and explanation of placement with the soil profile description (provide *photographs and profile*

drawings), artifact count and descriptions (provide table either in text or appendix).

**Evaluation** – assessment of site components and integrity

**Recommendations** – NRHP eligibility recommendation for the portion of the site within the proposed ROW/APE with above examples to support call

- **SUMMARY AND CONCLUSION**

Restate ABSTRACT and recommendations for historic property and/or site

- **REFERENCES CITED**

Certain references and citations should be included in the appropriate documentation and follow the *American Antiquity* style guide.

Davis, Hester (Editor)

1994 *A State Plan for the Conservation of Archeological Resources in Arkansas*. Originally published 1982. Arkansas Archeological Survey Research Series No. 21. Arkansas Archeological Survey, Fayetteville.

Early, Ann M., Hester Davis, Tom Green and George McCluskey

2010 Appendix B of the Arkansas State Plan: Guidelines for Archeological Fieldwork and Report Writing in Arkansas. In *A State Plan for the Conservation of Archeological Resources in Arkansas*, edited by H.A. Davis (Originally published 1982, revised 1994). Research Series No. 21. Arkansas Archeological Survey, Fayetteville.

National Register Bulletin

1997 *How to Apply the National Register Criteria for Evaluation*. Report 15, U.S. Department of the Interior, National Park Service, Washington D.C. Electronic document, <https://www.nps.gov/nr/publications/bulletins/nrb15/>, accessed October 16, 2018.

Woods, A.J., T.L. Foti, S.S. Chapman, J.M. Omernik, J.A. Wise, E.O. Murray, W.L. Prior, J.B. Pagan, Jr., J.A. Comstock and M. Radford

2004 *Ecoregions of Arkansas* (color poster with map, descriptive text, summary tables, and photographs). U.S. Geological Survey, Reston, Virginia.

The SHPO COVER LETTER, REPORT, FIGURES, and APPENDICES are submitted to the Section Head or the Lead for review. If no major edits are proposed, corrections will be made and the documentation will then be sent to SHPO through the administrative assistant. The staff will be copied on the email to the administrative assistant with the final edited version to use for reference. The documentation will be submitted to SHPO after it



has been reviewed and signed by the Division Head or Assistant Division Head. If comments need to be addressed, then the Section Head will send the documents back for corrections, and the staff will resubmit the corrected version to the Section Head and submitted as described above. If time constraints prevent further review and editing, the Section Head may deem it appropriate to proceed with sending it to SHPO.

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## VIII. ADDITIONAL DOCUMENTATION

- a) Addendum Report – If proposed design plans change for a project and therefore alter the APE, an additional survey and documentation will be completed to document the design revisions. The documentation should be an Addendum to the PIF or Addendum to the Cultural Resources Survey Report and be limited by 1) the nature of the proposed changes to the APE, and 2) if historic properties or sites are impacted. The Addendum should include all the main points of job description, design changes, field methods and results, and recommendations with the appropriate maps, photographs, and references cited, as outlined previously in this SOP. If monitoring was proposed as part of the original documentation, an addendum should be done covering the monitoring activities and results. The documentation will be sent to the Section Head for review and submittal to SHPO.
- b) SHPO Response – SHPO may request further documentation on a resource for a submitted ARS, PIF, or CRS Report. The documentation should be patented to the nature of the request: i.e. a response letter or addendum report. Alternatively, FHWA and ARDOT may disagree with SHPO's non-concurrence on a NRHP eligibility determination, adverse effect finding, or additional request for more information. A response letter with substantiated evidence may be sent to SHPO to reconsider the original reply. All documentation will be sent to the Section Head for review and submittal to SHPO.
- c) MOA – If a historic property will be adversely effected by the current project, a MOA will be needed to resolve the adverse effect to the historic property. Examples of MOA are found at [\\San1\gis\\_share\ARCH\MOA](\\San1\gis_share\ARCH\MOA). MOA documents exist for bridge removal, relocation, or preservation in place, eligible structures with standard architectural documentation (Arkansas Architectural Resources Form and photographs), and eligible sites with Phase III data recovery and Treatment Plan, if applicable. Any MOA Amendments shall follow the template provided by the ACHP. The MOA is not fully executed until all Signatories have signed the document. The final signed MOA should be sent

out to the Signatories and ACHP. Also see 36 CFR 800.6(c) for more information.

- d) Section 4(f) documentation – For use of certain historic bridges, Programmatic Section 4(f) documentation will be prepared by the Cultural Resource Section. The architectural historian will draft the documentation and submit it for review to the Section Head or Lead. Then, the architectural historian will submit the documentation to Assessments Section after incorporating all the changes. Other Section 4(f) documentation, such as a *De Minimis* finding or a Section 4(f) Evaluation, may also be prepared by the Cultural Resource Section for the physical use or impacts to a historic property with a statement of notice in either the PIF or CRS Report.
- e) Programmatic Agreement (PA) – A project-specific PA is prepared when the effects on historic properties cannot be fully determined prior to approval of a complex undertaking; terms and conditions are agreed upon to resolve potential adverse effects for the undertaking. Examples of PAs are found at [\\San1\gis\\_share\ARCH\PA](\\San1\gis_share\ARCH\PA). Also, see 36 CFR 800.14 for more information.

## IX. INTERNAL ARDOT DOCUMENTATION

- a) Constraints IOM was already discussed in Stipulation V (12-15).
- b) Changes in Project Scope memo – A reassessment of the project may be necessary for any project scope changes or when a reevaluation is required as part of the National Environmental Policy Act. The Cultural Resources reevaluation will assess any project scope changes and the need for additional consultation and/or survey work in accordance with Stipulation VI of the Agreement. The memo shall address unsurveyed acreage, if any; any recorded sites that may require further work; the number of sites that require Phase II or III testing; properties within the APE that are eligible or that need to be evaluated; a summary of any commitments that need to be met, and/or if terms for Stipulation VI were met. The IOM to the Job File will go to the Section Head for review and then to the Assessments Section, who will incorporate the information into the Reevaluation document.
- c) Environmental Assessment (EA) Cultural Resources – Upon request from the Assessments Section, a word document shall be developed that summarizes potential impacts to cultural resources in relation to the proposed project alternatives. This will be submitted to the Section Head for review and then to the Assessments Section, who will incorporate the information into the EA.
- d) Special Provision (SP) – A SP is a document that goes into the agreements for the contractor. If there is a cemetery, site, or property in close proximity to the project that the contractor and utilities needs to avoid impacting, a Restraining Conditions SP, map, and IOM are sent to Roadway Design and Right of Way Divisions. Other types of SPs include Archeological or Historic Property Monitoring, Removal of Historic Bridge, Construction Delay Due to Archeological Mitigation, or Limitation of Vibratory Equipment. Examples are found at [\\San1\gis\\_share\ARCH\SPs/](\\San1\gis_share\ARCH\SPs/).

## **X. SUMMARY**

The SOP describes the process to be performed by ARDOT Cultural Resources staff to identify, evaluate, and document FHWA undertakings that either have or do not have the potential to impact historic properties pursuant to Section 106 of the NHPA, its implementing regulations, and the Agreement. In addition, the SOP addresses other types of documentation, such as internal ARDOT process as part of constraints or construction. All documentation should be adjusted to the resource or historic property involved, project requirements, or requests made by ARDOT, FHWA, SHPO, ACHP, Tribes, or other invested parties as appropriate. The SOP will be a continuously evolving document as new changes are made or requested by consulting parties.

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**ATTACHMENT 1A**

**ARS STANDARDS AND PROCEDURES**

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## Architectural Resources Survey (ARS) Standards

Per Section 106 implementing regulations (36 CFR Part 800), all historic properties (including prehistoric or historic districts, sites, buildings, structures, or objects) within the Area of Potential Effect (APE) should be identified and evaluated for its eligibility under the National Register of Historic Places (NRHP) in accordance with the *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*.

### Structure Identification:

#### Area of Potential Effect

- The APE includes structures that may be affected by physical, visual, or audible impacts. Any property near the right-of-way, with a sightline to the project or can be affected by increased traffic noise, should be included.
  - Types of structures to record: residential and commercial buildings, churches, barns, etc. and all associated ancillary structures with a view of the project (you can skip buildings way behind the business or house and not visible from the road). Ancillary buildings may include (but are not limited to) barns, sheds, garages, stand-alone carports, well-houses, storm shelters, walls, fences, statues, signs, etc. As well as, any manmade objects part of the built environment should be evaluated.
- The ARS should evaluate all properties that are 45 years of age (from the current year) and older within the APE.

#### Planning

- Performing the ARS early helps us with the identification of constraints and possible minimization or avoidance of those properties during the preliminary design phases. The ARS can be initiated when the project location map and project description is received, and an ARS addendum can be completed if needed when plans are received.
- Before going to the field, you should plan the data collection. If you are unsure about planning, ask the Architectural Historians for assistance. A few methods to begin planning your trip are listed below.
- Checking the existing Arkansas Historic Preservation Program (AHPP) database and the ARS Viewer for recorded structures and their eligibility determination: [AHPP structure database](#).
  - The ARS Viewer is an important tool for project planning that includes previous Request for Technical Assistance (RTA) surveys, ARS surveys, AHPP structure data, and job status data.
  - Project locations should be checked for previously recorded properties (previous RTA and ARS submittals and related SHPO correspondence and AHPP data) before fieldwork.
    - If a property has been surveyed under a different job number, has received SHPO concurrence, and the eligibility recommendation will not be changed, then it does not need to be re-surveyed and can include the AHPP clearance reference number in the ARS SHPO letter and Section 106 report.

## Architectural Resources Survey (ARS) Standards

- If a property has an eligibility determination in the AHPP database, it does not require additional evaluation within the ARS if conditions remain the same and no new information is found. Instead, the AHPP survey number and recorded eligibility determination will be included in a table at the end of the ARS document. Pedestrian survey and photographic documentation of the property is still required to determine if the property needs to be re-evaluated in the ARS. The photographic documentation can be saved in the Architectural Historian's or Archeologist's internal job file.
- If a property within your APE has been previously surveyed by AHPP, an Architectural Historian can request the associated survey form from AHPP.
  - Be aware that some properties were included in RTA or ARS submittals even though they were not 45 years of age during the time of survey and were recommended as "not eligible". These properties will still be marked in the ARS Viewer but should be identified in the "comment" field with the note "eval. based on age." Any properties that were evaluated based on their age should be re-surveyed and re-submitted to SHPO.
- Using maps:
  - USGS topoview scale 1:62500 or larger scale: [TopoView](#)
  - Start with the 1970s-1980 map kmz download and use as an overlay, after placing "pins" on each square, church, or school continually move to older maps. Then uncheck map and see what remains where buildings that would be old enough previously existed.
- Using Google Earth Street View:
  - Verify older buildings by appearance. If you are not sure of styles or age, do other research first (such as above).
- Using aerial photography:
  - Reference online aerial resources such as USGS Earth Explorer or [historicaerials.com](#) to identify the age of buildings and to help plan your survey.
  - If no usable aerials can be found through those resources, then ARDOT's photogrammetry files can be used to search for aerials in the project area.
- If a property does not date to 45 years of age based on the research, then it is too new to evaluate and should not be included in the ARS.
- Many of the buildings in rural Arkansas are vernacular versions of styles, such as Folk Victorian, Craftsman, Minimal Traditional, and Ranch styles—some will be eligible. Ask to borrow reference books or consult with the Architectural Historians if you need help with styles, building types, and dating houses visually.

### Field Data

- Take photographs of as many sides of the building as you are able to see from a safe distance. Always capture as much of the front façade as possible. Take detail pictures of modifications, if needed.



## Architectural Resources Survey (ARS) Standards

- Bridges: at a minimum, take photos of each approach and each profile, for four photos total (if safe to do so). If you are able to get beneath the bridge, take photos of the substructure and any connection types visible. Always take photos of any plaques, stamps, or markers on the bridge.
- Buildings or other structures: at a minimum take a photo of the front façade and oblique or side views (total of two photos). Be sure to include photos of architectural details that will support your eligibility argument (photos of additions or changes in material, etc.).
- Materials and additions should be noted in the handheld unit.
- GIS Section has separate guidelines, “Environmental GIS Section ARS Procedures”, for collecting structure data out in the field and office processing procedures.

## Structure Research

Prior to and after fieldwork, additional research should be done to assist with identifying a property’s possible associations and significance under the established NRHP criterion. Below are additional sources and maps, along with the ones previously mentioned above, that aid in the identification and evaluation process. Some resources may not be available for a particular location or resource.

### Information Sources

- Encyclopedia of Arkansas entries for the city and/or county – you can use the sources listed at the bottom as reference for other possible sources or reasons for development in an area.
- Sanborn maps, when available
- County Assessor data for build date, (if reasonable)
- City directories – use your Arkansas State Library card to access online (<https://www.ancestryheritagequest.com/HQA/CityDirectories>) or visit the Butler Center/Arkansas Studies Institute in downtown Little Rock.
- Historic Maps Collection at the (<http://ahc.digital-ar.org/cdm/landingpage/collection/p16790coll5>) for additional map sources
- Aerial photography at <https://earthexplorer.usgs.gov/>; <https://www.historicaerials.com/viewer>; and/or the Photogrammetry Section aerials
- Newspaper research:
  - NewspaperArchive (<https://access-newspaperarchive-com.ezproxy.library.arkansas.gov/> that can be accessed free through the Arkansas State Library with your card).
  - Newspapers.com
- Owner information (when easily accessible) from Parcel Map Viewer

# Architectural Resources Survey (ARS) Standards

## Map Sources

- Lucas Jr., Fielding, *1817 Arkansa Ter. B.T. 1822 Edition*. B.T. Welch & Co., Baltimore, Maryland. ([David Rumsey](#))
- BLM GLO plat maps (1816 and 1819 for eastern AR; 1830-1840s for most of the state: resurveys and map corrections in the 1850s) ([GLO Records](#))
- Perry-Castaneda Library Map (PCLM) collection:  
<https://legacy.lib.utexas.edu/maps/topo/arkansas/>, <https://ngmdb.usgs.gov/topoview/>, and <http://historicalmaps.arcgis.com/usgs/>
- 1930s–1940s USGS/War Department 1:62,500 (15 minute) scale topographic maps: same sources noted for PCLM collection
- 1940s State of Arkansas-Contributed USGS 1:31,680 scale topographic maps: same sources noted for PCLM collection
- 1936 Arkansas County Highway Maps: [1936 County Highway Maps](#)
- University of Alabama Map Collection: <http://alabamamaps.ua.edu/historicalmaps/index.html>
- David Rumsey Map Collection: <https://www.davidrumsey.com/>
- Historic/Modern USGS 1:24,000 (7.5' minute) scale USGS topographic maps:
  - [\\San1\gis\Environmental\USGS Quads](#) (In-House access to TIFs)
  - <https://ngmdb.usgs.gov/topoview/> (Can download the most recent topo from this service to determine Section, Township and Range quickly)
  - <https://livingatlas.arcgis.com/topoexplorer/index.html> (Has a really cool fade tool you can use, but doesn't always have all the maps you might want; can verify that in TopoView)
  - <https://viewer.nationalmap.gov/advanced-viewer/> (the modern topographic map)
- Internal Map File Locations:
  - \\san1\GIS\ENV\_HISTORIC\Historic Maps
  - \\san1\GIS\ENV\_HISTORIC\maps
  - \\san1\GIS\ENV\_HISTORIC\History\_Primary\_and\_Secondary\_Sources\Arkansas\_History\_Primary\_and\_Secondary\_Sources\Map Resources

# Architectural Resources Survey (ARS) Standards

## ARS Information

### Property Numbers

- Generally, property numbers are in order from south to north, or from west to east.
  - As a rule of thumb, numbering should follow log mile direction.
    - If the ARS document will have a large number of properties, you can begin consulting with the GIS section for help with the property numbering.
  - AHPP resource numbers should be added behind the property numbers, for example: Property 1/SA0456.
  - Always verify the property numbers with the maps produced by GIS.
  - If an addendum ARS is needed, continue numbering from the previous ARS submitted to AHPP.
- Ancillary buildings should be numbered as lowercase a, b, c, etc, to a main building.
  - 1 is the main building, 1a is the first ancillary.
  - 1 is the district or site encompassing a grouping of structures, such as, historic Highway Department District 2 site, with each structure assigned a letter, 1a, 1b, etc.
- Stripmalls (20<sup>th</sup> Century) /Main Street Commercial Row Buildings (19<sup>th</sup> Century):
  - Each separate roofline is a different property number.
    - Due to the ability to change and alter each façade separately, they should be evaluated separately.
    - Each can be a separately owned building with a common/shared wall.
- Sculptures:
  - They can be as part of a sign or stand-alone sculpture, and they should be an ancillary structure associated with a specific business (property).
  - They can be considered historic as part of the business or associated with a past entity as part of local history.
  - Check for AHPP number on all sculptures
  - Signs can be historic. For example:
    - In the mid-19<sup>th</sup> Century, signs are very important as car culture took over the nation; the faster patrons could pass by, the larger and brighter the signs need to be.
    - A barber shop pole and sign could be historic with its associated historic barber shop building.
- Shopping Malls:
  - They are one building; therefore, it should have one number assigned, much like an apartment building.

# Architectural Resources Survey (ARS) Standards

## ARS Property Description Format

- **First sentence** should include year built, type of building, and who built it (and for bridges: feature intersected and road carrying bridge). Include address if available. If an ARS includes addresses on most properties, but can't be found for some, include this sentence for those property descriptions without addresses: "No address for this property was found." If all of the properties in the ARS do not have addresses (Assessor data) found online, you do not need to add the sentence.
- Any **Criterion A and Criterion B** associations are listed after descriptive sentence.
  - Research should be cited, when applicable, even if no association is found, such as Sanborn maps or City Directories. Some examples include:
    - Research shows a structure was/was not found to be associated with Justin Matthews;
    - John Doe resided in the house in 1940 (City Directory). No association under Criterion B was found;
    - AHPP identified it as the Joseph Callaway House. Callaway was an attorney and prominent citizen in Arkadelphia at that time the house was built. It is eligible under Criterion B.
- For **Criterion C** section: describe building materials and any other design information, such as windows, roof, door, siding;
  - Window written description
    - ## should be used for ARS to conserve space, for example 2/2
    - #-over-# should be used in reports, for example 2-over-2
  - You do not need to list all of the materials or design that can plainly be seen in the photographs with intact integrity.
  - Explain what integrity (location, setting, materials, design, workmanship, feeling, and association) issues exist for Criterion C eligibility. For example:
    - The house has a side and rear addition. The windows are vinyl replacements. The integrity of design, materials, and feeling has been compromised.
  - Additional statement to justify eligibility, if applicable, includes "This structure is a common example of this style that has no distinctive characteristics or features".
- The **last paragraph** for the structure should read:

Property # is recommended as eligible/not eligible for inclusion in the National Register of Historic Places (NRHP).

OR

ARDOT agrees/disagrees that Property 1/SA0456 should remain eligible/not eligible for inclusion in the NRHP.
- If the structure is less than 50 years old but considered eligible, the **last paragraph** for the structure should read:
  - As long as its integrity does not diminish and remains intact, the property is recommended as eligible upon reaching 50 years of age.

# Architectural Resources Survey (ARS) Standards

## Historic Property Boundary Description

- NRHP property boundaries shall be included in the ARS.
  - These boundaries will be determined by the Architectural Historians in accordance with the *National Register Bulletin 21: Defining Boundaries for National Register Properties*.

## Additional Property Information

- Extra Page (at the end of the document before the figures)
  - If you have several buildings with an appearance that might be 45 years or older but were built more recently:
    - Add a page and include in a table or list the structure address (or UTM if address is unavailable) and the year built.
    - It is unnecessary to assign property numbers or add photos for these buildings.
  - If there are historic properties shown in the AHPP structure databases that have been destroyed or delisted, add a page and list the AHPP resource property(ies) number with the appropriate heading.
  - If there are historic properties shown in the AHPP structure databases that are in the wrong location, add a page and list the AHPP resource property(ies) number with the appropriate heading.

## ARS Figures

- Topographic map depicts the project location.
- Aerial map depicts the property numbers and their exact locations. The aerial map should also show the historic property boundary.

## Additional ARS Resources:

For more in-depth internal ARS procedures, ARDOT staff has additional guidance that includes the following information:

- Environmental GIS Section ARS Procedures
- ARS Format Guide
- Historic Property Boundary Procedures
- ARS Procedures for Consultant Review