U.S. Department of Transportation
Federal Highway Administration

Oregon Division

530 Center St, Suite 420
Salem, OR 97301
Ph: (503) 399-5749
Fax: (503) 399-5838

January 3, 2012

In Reply Refer To:
389.000

Mr. Jim Norman
Environmental Planning Unit Manager
Oregon Department of Transportation
4040 Fairview Industrial Drive, SE, MS #6
Salem, Oregon 97302

Subject: National Historic Preservation Act Section 106 Programmatic Agreement

Dear Mr. Norman:

Enclosed is a copy of the Oregon Federal Highway Administration Section 106 Programmatic Agreement (PA). The PA outlines Section 106 responsibilities for Federal Highway Administration (FHWA) activities within the state of Oregon. The PA is effective as of December 23, 2011 and supersedes the October 15, 2001, Section 106 Programmatic Agreement.

I have very much enjoyed working with you and your staff in the development of this PA and look forward to our continued work together. If you have any questions, please feel free to contact me at (503) 316-2559 or by e-mail at Michelle.Eraut@dot.gov.

Sincerely,

Michelle Eraut

Michelle Eraut
Environmental Program Manager

Enclosure

A PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE OREGON STATE HISTORIC PRESERVATION OFFICE AND THE OREGON DEPARTMENT OF TRANSPORTATION REGARDING IMPLEMENTING SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE FEDERAL-AID HIGHWAY PROGRAM IN OREGON

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal-Aid Highway Program (Program) in Oregon authorized by 23 USC 101 et seq., through the Oregon Department of Transportation (ODOT) under 23 USC 315; and the FHWA is the "Agency Official" responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 USC 470), and the implementing regulations 36 CFR Part 800; and

WHEREAS, FHWA has determined that certain transportation projects in this Program constitute "undertakings" as defined in 36 CFR 800.16(y) which may have an effect upon properties included, or eligible for inclusion, in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR 800.14(b) to develop this Programmatic Agreement (Agreement) to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Oregon; and

WHEREAS, FHWA recognizes that it has a unique legal relationship with federally recognized Tribes (Tribes) set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes must, therefore, recognize the government-to-government relationship between the federal government and Tribes; and

WHEREAS, FHWA has notified Tribes with ancestral lands in Oregon about this Agreement, has requested their comments, and has taken any comments received into account; and ODOT has notified the public, Oregon's Metropolitan Planning Organizations (MPOs), Certified Local Governments (CLGs), and the Historic Preservation League of Oregon and has taken any comments received into account. Tribes include: the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Klamath Tribes, the Confederated Tribes of Siletz, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs, the Nez Perce Tribe, the Yakama Nation, the Fort McDermitt Paiute-Shoshone Tribe of Oregon and Nevada, the Confederated Tribes of the Colville Reservation, the Smith River Rancheria, and the Cowlitz Indian Tribe, and

WHEREAS, this Agreement does not apply when an undertaking's Section 106 area of potential effects (APE) extends onto Tribal lands or to undertakings that affect historic properties on Tribal lands as defined in 36 CFR 800.16(x); and

WHEREAS, ODOT maintains a staff of Cultural Resources Specialists who meet the professional qualifications in 36 CFR Part 61, Appendix A in the fields of archaeology,

architectural history, and history, to carry out its historic preservation programs and responsibilities; and

WHEREAS, this Agreement supersedes and replaces the original Programmatic Agreement for Minor Transportation Projects executed October 15, 2001, entitled "Programmatic Agreement Among the FHWA, ODOT, Oregon SHPO, and the ACHP Regarding the Implementation of Minor Transportation Projects;" and

WHEREAS, this Agreement sets forth the process by which FHWA, with the assistance of ODOT, will meet its responsibilities under Section 106 of the NHPA and implementing the regulations set forth in 36 CFR Part 800. For purposes of this Agreement, the definitions for terms appearing in 36 CFR 800.16 (a) through (z) will be employed whenever applicable.

NOW THEREFORE, the FHWA, the ACHP, the SHPO, and the ODOT hereby agree that the Program in Oregon will be administered according to the following stipulations in order to satisfy FHWA's Section 106 responsibilities set forth in 36 CFR Part 800 and to integrate historic resource protection responsibilities together with its other responsibilities under Federal and State statutes, regulations and policies.

Stipulation 1: Applicability and General Requirements

A. This Agreement applies to all Federal-Aid Highway Program undertakings administered by the FHWA Division in the state of Oregon.

B. This Agreement does not apply to the sovereign territories of the Tribes located within Oregon.

C. This Agreement is applicable to the process used by FHWA and ODOT to comply with Section 106 of the NHPA as regulated in 36 CFR Part 800, and establishes a process by which FHWA consults with the SHPO, the ACHP, and consulting parties, including Tribes, during the Section 106 process.

D. FHWA, in compliance with its responsibilities under Section 106 of the NHPA and 36 CFR Part 800,will ensure that ODOT carries out the requirements of this Agreement as a condition of its award of any assistance under the Federal-Aid Highway Program to ODOT.

E. ODOT will employ permanent professional staff in the fields of History, Archaeology, and/or Architectural History who are responsible for managing and/or completing the Section 106 process described in this Agreement. The individuals employed will meet the requirements of the Secretary of the Interior's (SOI) Professional Qualifications Standards (36 CFR 61, Appendix A).

F. ODOT, on behalf of FHWA, consistent with 36 CFR 800.2(d) will provide the public with information about an undertaking and its effects on historic properties and seek public comment and input in a manner consistent with ODOT's public

involvement plan (*Technical Services Geo-Environmental Bulletin No. GE08-03(B), Public Involvement Procedures for Federal-Aid Project Development*) for individual project actions as appropriate to the nature, location and complexity of the project.

G. ODOT will notify FHWA when other Federal Agencies are involved in the undertaking. ODOT, on behalf of FHWA, will consult and coordinate its Section 106 activities with other federal agencies that have regulatory or land management interests in the undertaking. If ODOT coordination cannot establish FHWA as the lead federal agency for the undertaking, ODOT will notify and request FHWA to assist in resolving the issue.

H. ODOT agrees to administer the provisions of this Agreement using professional staff as described in Stipulation 1E. For matters regarding the application of this Agreement, ODOT's single point of contact, the Environmental Planning Unit Manger, will be maintained and coordinated with the SHPO, Tribes and FHWA.

I. All technical terms used within this Agreement are defined in 36 CFR 800.

Stipulation 2: Delegation

A. FHWA remains responsible, pursuant to this Agreement, for all consultation with the Tribes and specifically retains its government-to-government relationship with the Tribes. ODOT may assist FHWA with such consultation as detailed below and in a manner that satisfies ODOT responsibilities under Oregon Revised Statute 182.162.

July 1, 2011, ACHP Guidance, *Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation Under Section 106 of the National Historic Preservation Act*, directs Federal Agencies "to consult with Indian Tribes on a government to government basis pursuant to Executive Orders, Presidential memoranda, and other authorities. Section 36 CFR 800.2(c)(2)(ii)(B) of the ACHPs regulations remind federal agencies that the Federal Government has a unique legal relationship with Indian Tribes set forth in the Constitution of the United States, Treaties, statutes, and court decisions. Consultation with Indian Tribes should be conducted in a sensitive manner respectful of tribal sovereignty."

B. FHWA retains its responsibility for complying with Section 106 of the NHPA and 36 CFR Part 800. For the purposes of this Agreement, ODOT, through qualified cultural resources staff, and on behalf of FHWA, will conduct the Section 106 process with the SHPO, the Tribes, consulting parties, and the ACHP where appropriate, as described below. To accomplish this, FHWA delegates the following decision-making tasks to ODOT:

1. Determination of undertaking.

2. Invitation, identification and documentation of appropriate SHPO, Tribes and other consulting parties. Other consulting parties may include, but will not be limited to: project sponsors, local governments, other Federal agencies with jurisdiction, preservation organizations, individuals, organizations, or other such parties that have expressed interest or desire to participate as a consulting party.

3. Consultation with the SHPO regarding the determination of the Area of Potential Effects (APE) of an undertaking.

4. Consultation with the SHPO regarding the evaluation of the eligibility of properties for listing in the National Register of Historic Places (NRHP).

5. Consultation with the SHPO regarding the effect of a Program undertaking on properties that are determined eligible for listing on the NRHP through the Section 106 process.

6. Following consultation with FHWA, coordination of the resolution of adverse effects that Program undertakings cause to historic properties through the development of a Memorandum of Agreement (MOA) following Stipulation 4E of this Agreement.

C. All delegated decision-making authority may only be carried out by ODOT, through coordination with qualified ODOT Cultural Resources Staff, on behalf of FHWA; decision-making authority may not be delegated to project sponsors, ODOT consultants, or any other party. The decision-making authority does not extend to projects that would affect National Historic Landmarks—FHWA will make decisions regarding such properties in accordance with 36 CFR 800.10.

Stipulation 3: Tribal Consultation

A. In accordance with 36 CFR 800.3(f)(2), ODOT shall, on behalf of FHWA, consult with Tribes that might attach religious and/or cultural significance to historic properties in the APE and invite Tribes to be consulting parties for all Program undertakings. Consultation with Tribes will follow procedures that are established with individual Tribes. Additionally, the signatories to this Agreement will observe the following requirements:

1. FHWA recognizes that it has a unique legal relationship with Tribes as set forth in the Constitution of the United States, treaties, regulations, and court decisions, and that consultation with a Tribe must, therefore, recognize the government-to-government relationship between the federal government and Tribes. Nothing in this Agreement affects or changes FHWA's responsibilities and obligations toward Tribes. Consultation with Tribes must also recognize and respect the government-to-government relationships that exist among state governments and Tribes.

The Section 106 review process is one of the consultations within the framework of those government-to-government relationships established by the NHPA, Oregon laws and statutes, and other agreements and policies, like ODOT's Government to Government Policy. Accordingly, the parties recognize that consultations with Tribes are also carried out under circumstances not related to the Section 106 process.

2. FHWA will send a letter to each Tribe in Oregon notifying the Tribes of the execution of this Agreement, transmitting a copy of this Agreement, noting that ODOT may initiate consultation with the Tribes for undertakings carried out under the provisions of this Agreement, and giving the Tribes the option of consulting directly with FHWA for individual undertakings or types of undertakings. If any Tribe or officially designated representative of a Tribe submits a written request to consult with FHWA in lieu of, or in addition to ODOT, FHWA will notify ODOT and consult with the Tribe on the Program undertaking. FHWA will provide annual e-mail notification to Tribes that this programmatic agreement is in effect.

3. FHWA will ensure that ODOT initiates and conducts consultation with Tribes for undertakings carried out under this Agreement through timely receipt of summary Tribal Consultation spreadsheets (Exhibit 1) prepared by ODOT at each meeting with Tribes. ODOT's qualified cultural resources staff and FHWA will ensure that Tribes are provided information regarding proposed undertakings early in project planning and are invited to participate in consultation in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 CFR Part 800. Upon receipt of a written request from any officially designated representative of a Tribe to consult with FHWA in lieu of, or in addition to ODOT, FHWA will consult with that Tribe for the particular undertaking or Program matter.

4. ODOT's consultation with Tribes will be documented in summary Tribal Consultation Spreadsheets (Exhibit 1), project files and NEPA documentation. FHWA and the SHPO will be provided the opportunity to directly participate in such consultation on individual undertakings as the circumstances warrant. ODOT will keep FHWA and the SHPO informed of the status of such consultation, provide advance notice of meetings and supply documents including summary Tribal Consultation Spreadsheets and other supporting materials to FHWA and the SHPO. ODOT and FHWA will abide by the confidentiality provisions of Section 304 of the NHPA in determining what information may be provided to non-federal parties.

B. Ongoing consultation with Tribes may lead to modifications of the consultation process with the Tribes over time. Any such modifications may be implemented upon the mutual agreement of FHWA, ODOT and the affected Tribe.

Stipulation 4: Standard Review for Program Undertakings

For FHWA Program undertakings reviewed pursuant to this Agreement, ODOT will be responsible as described below, and for completing the necessary documentation in accordance with 36 CFR 800.11 and applicable SHPO standards. ODOT will observe the following requirements:

A. Initiate the Section 106 Process:

ODOT will carry out the requirements of 36 CFR 800.3 consisting of the following activities:

1. Establish that the action being taken is an undertaking as defined in 36 CFR 800.16(y) and 36 CFR 800.3(a).

2. If ODOT determines that the undertaking is an activity type that does not have the potential to cause effects to historic properties, assuming such historic properties are present, the Section 106 process is complete pursuant to 36 CFR 800.3(a)(1). ODOT will record the determination in the appropriate environmental document for the undertaking, as seen under Stipulation 4C of this Agreement.

3. Coordinate the appropriate level of public involvement consistent with ODOT's public involvement procedures and meeting obligations under 36 CFR 800.

4. Identify, invite and document all consulting parties including Tribe, the SHPO and members of the public.

ODOT will ensure that the above efforts are completed during the earliest stages of project development and reviewed as needed during project development. In consultations initiated, ODOT will explicitly identify the FHWA project nexus and provide both the Federal-Aid Project Number(s), or other federal identification and ODOT Key Number(s).

B. Identification Efforts:

ODOT, through coordination with qualified cultural resources staff, in consultation with SHPO and with the assistance of the consulting parties, will carry out the requirements of 36 CFR 800.4 consisting of and documenting the following activities:

1. Establish the Area of Potential Effect (APE) as defined in 36 CFR 800.16(d).

2. Determine the scope of identification efforts. The assigned ODOT qualified cultural resources staff shall determine and document the APE as defined in 36 CFR 800.16(d) and outlined in 36 CFR 800.4(a)(1).

3. Conduct the appropriate level of literature research and/or field reconnaissance surveys to determine the absence or presence of historic properties within the APE. This work will be completed under the direction and supervision of individuals qualified under 36 CFR Part 61, Appendix A.

4. In consultation with the Tribes and other consulting parties, evaluate the historic significance of the identified historic properties by applying the criteria in 36 CFR Part 63.

C. Findings of No Historic Properties Affected:

ODOT will notify the SHPO, Tribes and other consulting parties whether or not historic properties are present. These Findings do not require case-by-case review by SHPO. Rather documentation will be provided annually to the SHPO and FHWA in the format shown in Exhibit 2, provided that:

1. ODOT has consulted with the Tribes and other consulting parties as appropriate; and,

2. ODOT staff described in Stipulation 1E reviewed and/or conducted the literature research, and/or field reconnaissance scoping/survey to determine that there are no historic properties present in the APE.

SHPO will be provided an opportunity to review eligibility, for projects that have determined there are No Historic Properties Affected, but will result in direct impacts.

D. Findings of Effect:

If, under Stipulation 4B, properties are determined to be eligible for or are found to be listed on the NRHP and SHPO concurs, then ODOT, in consultation with the SHPO and consulting parties, will conduct an assessment of adverse effects (36 CFR 800.5).

Unless otherwise specified in this Agreement, such as Stipulation 4C above, ODOT will provide copies of any Findings of Effect to FHWA and the SHPO. During the time that ODOT provides for a funded position dedicated to review of ODOT projects, SHPO agrees to provide comments on the proposed finding within

21 days of receipt. This agreement does not affect the standard 30 day comment period for Tribes and other consulting parties. The Findings of Effect documentation will conform to the format found in Exhibit 3.

When ODOT determines that the criteria of adverse effect (36 CFR 800.5) apply to none of the historic properties in the APE, ODOT will document this finding in a statement of No Adverse Effect. If the SHPO doesn't respond in 21 days, or consulting parties do not respond in writing within 30 days to an adequately documented finding of no adverse effect, ODOT and FHWA will assume concurrence with the findings statement and proceed with the Program undertaking. If any party objects, in writing, to a finding of no adverse effect in the time frames provided, ODOT will comply with the requirements of 36 CFR 800.5(c)(2).

If ODOT determines that the Program undertaking has an Adverse Effect on one or more historic properties, the findings statement will include an explanation of why the effects are adverse giving due consideration to the criteria for which the property is eligible. Following consultation with FHWA, ODOT's qualified cultural resources staff, will provide documentation of the finding and consult with the SHPO and the consulting parties to resolve the adverse effect in accordance with Stipulation 4E. Finding documentation will conform to the format in Exhibit 3 of this Agreement.

E. Resolution of Adverse Effect:

ODOT will ensure that public involvement procedures are followed so that adequate public input is received regarding a resolution to the adverse effect. ODOT and FHWA will determine, and invite to consult, any individual or organization that may assume a specific role or responsibility in the MOA. FHWA will provide notification to the ACHP of each undertaking that results in a Finding of Adverse Effect. FHWA will invite the ACHP to participate in the development of the MOA.

In consultation with FHWA, ODOT will continue to consult with the SHPO and other consulting parties to develop mitigation measures to avoid, minimize or mitigate the adverse effects of the Program undertaking on the historic properties (36 CFR 800.6). Mitigation measures developed will be acceptable to all MOA signatories and be consistent with 23 CFR 771.105(d).

ODOT, on behalf of FHWA, shall:

1. Coordinate consultation meetings among FHWA, the SHPO, consulting parties, and the ACHP (when participating in consultation) to discuss effective and appropriate minimization or mitigation measures;

2. The draft MOA distributed will incorporate FHWA comments. FHWA will distribute the draft MOA to the ACHP and ODOT will prepare and distribute a final MOA to all other signatory and consulting parties, for a review period of 15 working days. The distribution cover letter for the draft MOA will indicate that the MOA is distributed on behalf of FHWA; will include the Federal-Aid Project Number(s), or other federal identification; the ODOT Key Number(s); and, will indicate the appropriate avenues for comments to FHWA and ODOT;

3. After the review period for the MOA has ended, ODOT and FHWA will share and discuss any comments on the MOA and will reach a consensus on addressing comments; and

4. After comments are incorporated into the final MOA, ODOT will distribute the MOA for signatures. When the ACHP participates, FHWA will provide the MOA to the ACHP. Upon receiving all signatures, ODOT will: provide all signatory parties a copy of the MOA containing original signatures; provide copies of the MOA to consulting parties; and, provide two fully executed copies to FHWA, one for the project record and one for provision to the ACHP for filing.

FHWA will provide a copy of the MOA to the ACHP for filing, for each MOA that the ACHP does not participate.

F. Disagreement with Findings:

ODOT will notify FHWA if, at any point in the Section 106 process, an objection or dispute arises. Dispute resolution will proceed according to Stipulation 7A of this Agreement.

Stipulation 5: Alternate Review of Program Undertakings

The project types and activities listed below have no or minimal potential to cause effects to historic properties. These undertakings will not require review by the SHPO or the ACHP provided all terms and conditions of this Agreement are met. ODOT will provide FHWA with documentation that the process is complete when NEPA documentation is submitted. All other undertakings will be reviewed according to Stipulation 4.

For project types contained in List A—Program Undertakings Eligible for Alternative Review Procedures—Summarized in Annual Report and List B— Program Undertakings Eligible for Alternative Review Procedures—Summarized in Annual Report and Project Memo, personnel meeting the Professional Qualification Standard described in Stipulation 1E of this Agreement will employ a multidisciplinary approach to implement the following review process as appropriate to the project and in conformance with current acceptable professional practice. Insofar as the activities in Lists A and B are limited to the items specified and have no potential to adversely affect a historic property, the following procedures will be used.

A. Review project description to determine the scope of work and APE.

B. Review existing information on previously identified historic properties in the APE. This review may include, but not be limited to: the SHPO Historic Resources and Archaeological databases, General Land Office (GLO) maps, title or assessor information, Sanborn maps (when applicable), Tribal information, ethnographic information and existing construction plans.

C. Determine if the proposed action fits activities included in List A or List B.

D. If ODOT determines that the undertaking is in List A, then FHWA has determined that the activity is of the type that has no potential to effect historic properties, and as such does not require any additional project-level review under Section 106. ODOT will document its review in the applicable project file and in the applicable FHWA NEPA document for the project. This information will be provided annually to SHPO and FHWA, no later than March 1, in a spreadsheet format covering the previous calendar year (Exhibit 2). SHPO will provide acknowledgement of the receipt and sufficiency of the annual report no later than 60 days following receipt of the annual report. This information will be tracked via ODOT's current Cultural Resources database.

List A Program Undertakings Eligible for Alternative Review Procedures—Summarized in Annual Report

1. Installation of new sign posts, interconnection devices, railroad warning devices, and improved crossing surfaces insofar as such activities cause minimal ground disturbance and are in areas of low archaeological potential.

2. In-kind replacement of bridge decking and expansion joints and overlay of existing approach roads for all bridges where there will be no expansion of surface area.

3. Replacement and upgrade of safety barrier and guardrail within the disturbed right-of-way that do not require the addition of fill material or grading outside of the existing roadway prism.

4. Installation of roadway lighting and safety guardrails within the roadway prism.

5. Acquisition of scenic easements and other protective easements that do not lead to ground disturbance activities.

6. Installation of landscaping within roadway medians, existing interchanges, and adjacent to the roadway for the purpose of highway beautification.

7. Minor bridge rehabilitation, bridge rail repair or replacement, scour protection, or substructure alterations for bridges less than 50 years old insofar as the bridge(s) are not considered potentially eligible for the NRHP under Criteria Consideration G.

8. Placement of riprap within previously disturbed areas to prevent erosion of bridge piers and abutments and without the addition of access roads.

9. Replacement and upgrades of non-eligible culverts not located within a known site that occur in-place within the disturbed right-of-way, and that do not require the addition of fill material or grading outside of the existing roadway prism.

10. In-kind repair or replacement of existing signs, lighting, guardrails and traffic signals.

11. Removal or replacement of roadway markings such as painted stripes, raised pavement markers, thermoplastic tape, raised bars, rumble strips, or installation of sensors in existing pavements.

12. Modification of traffic control systems or devices using existing infrastructure including installation, removal, or modification of regulatory, warning or informational signs.

13. Installation of freeway surveillance or ramp metering equipment entirely contained in the roadway prism.

14. Replacement or modification of existing highway directional, safety and/or operational signs.

15. Installation or modification of bike paths or pedestrian facilities (not located within a historic district) that involve minor ground disturbance.

16. Addition of bicycle and pedestrian lanes, paths and related facilities (not located within a historic district) within road prisms.

17. Preservation of pavement including overlaying, inlaying, milling, grooving or resurfacing of existing ramp, roadway and parking lot surfaces where there will be no expansion of the surface area.

E. For activities contained in List B, in addition to procedures outlined in Stipulation 5A-D, ODOT will:

1. Determine the degree of existing vertical and horizontal ground disturbance within the APE by performing a field inspection or reviewing plans from previous construction as appropriate;

2. Assess the likelihood that unidentified historic properties exist in the APE;

3. Consultation with the Tribes according to Stipulation 3 of this Agreement;

4. Determine the presence or absence of previously unidentified historic properties within the APE by performing appropriate investigations (literature review or reconnaissance survey);

5. Document the inclusion of the activity on List B using the format established in Exhibit 4. If ODOT determines that archeological monitoring is required, ODOT will notify the SHPO and any Tribe with interest. This documentation will be provided to FHWA for review in the applicable NEPA document for the project.

List B—Program Undertakings Eligible for Alternative Review Procedures—Summarized in Annual Report and Project Memo

1. Improvements within the existing boundaries of existing non-eligible rest areas and truck weigh stations located along the Interstate or State Highway System.

2. Correcting substandard roadway geometrics and intersections (i.e., spot improvements), provided such corrections do not extend beyond the limits of the existing road prism.

3. Minor safety related drainage improvements including:

    - Installation, replacement or removal of non-eligible culverts and headwalls;
    - Installation, replacement and extensions of pipes;
    - Addition of pipe end sections or traversable grates; and
    - Converting drop inlets to traversable designs.

4. Replacement, upgrade, and/or installation of curbs, medians, sidewalks or right-of-way fencing.

5. Modernization of an existing highway by widening or other improvements provided such improvements occur entirely within the limits of the disturbed right-of-way and no cultural resources are present.

6. Undertakings that involve canal systems, railroad systems, covered bridges, suspension bridges, moveable bridges, arch bridges, and truss

bridges that ODOT, in consultation with SHPO as needed, has determined will have no potential to affect the historic features or characteristics that make these resources eligible for the NRHP including:

- Replacing non-eligible bridges over eligible canals, or adding new canal crossings (providing that bridges are not within Historic Districts);
- Channeling segments of canals through culverts comparable in size to adjacent road prisms;
- Replacing in-kind and repairing of original materials on historic bridges of the types listed above; and
- Program undertakings adding transportation features adjacent to, over, or under railroad corridors, or adding surface crossings.

Stipulation 6: Geotechnical Investigation Review

Because geotechnical investigations occur very early in project development, this type of Program project activity may be reviewed independently of its association with a larger undertaking. This activity has a limited and well defined APE, and will be reviewed for Section 106 purposes by the ODOT Archaeologists, using the process defined in Stipulation 5 under the following conditions:

A. ODOT archaeological staff will conduct a cultural resource review (i.e. checking the SHPO Database, and any relevant research materials and maps) for *all* geotechnical exploration requests and determine the likelihood of historic properties, or potential historic properties, being present within the proposed exploration area:

1. If no known historic properties are present, ODOT may proceed without further review so long as crews and equipment are restricted to the proposed exploration area.

2. If historic properties are found to be in the area, ODOT may proceed without further review so long as all work is contained within the road prism. If the geotechnical explorations are to be conducted outside of the road prism, the project must be cleared through SHPO.

3. If drilling is proposed within the boundaries of a historic property, the property must be cleared through SHPO using the standard review process outlined in Stipulation 4. In these cases, testing and/or monitoring may be necessary.

Review of this specific project activity may occur separately from Section 106 review for the rest of the undertaking. Monitoring for this specific project activity may be conducted as a result of consultation with FHWA, SHPO, the Tribes and other consulting parties.

Stipulation 7: Additional Provisions

A. Dispute Resolution. Should the SHPO object within 21 days, or any other party to the consultation, or the ACHP object within 30 days to any documentation submitted or actions proposed pursuant to this Agreement, ODOT will notify FHWA upon learning of the objection. FHWA will ensure that the ODOT consults with the objecting party to resolve the objection. If the objection cannot be resolved, FHWA will complete the review of the Undertaking in accordance with 36 CFR 800.4 through 36 CFR 800.6.

B. Public Participation and Notification. ODOT will consider the views of the public in all determinations of eligibility and assessments of adverse effect in a manner consistent with its public involvement plan for individual project actions and appropriate to the nature, location and complexity of the project. Comments and considerations of the public will be included in the Section 106 documentation.

C. Training. ODOT and FHWA will continue to provide training to Region staff, local agencies, and others as appropriate to ensure compliance with Section 106, and to ensure the quality and successful delivery of the terms of this Agreement.

D. Coordination of Project Review Among ODOT Regions. ODOT will direct their consultants and Region environmental staff to follow the procedures established within this Agreement. All documentation prepared pursuant to this Agreement will be submitted to the ODOT Cultural Resources Staff at ODOT's Geo-Environmental Section for review, submittal and archival filing and to ensure consistency and quality control. All consultations with SHPO, Tribes and other consulting parties will be conducted by ODOT Cultural Resources Staff. ODOT Geo-Environmental Cultural Resources Staff, in coordination with ODOT's Geo-Environmental Administrative Staff, will keep all documentation on file.

E. Annual Report. ODOT will provide to FHWA, the ACHP and SHPO an annual report no later than March 1 which covers activities of the previous calendar year.

The annual report, as outlined in Exhibit 2, will include a summary of actions taken under this Agreement from the previous calendar year. With the annual report, ODOT will provide to SHPO and FHWA copies of the memos (Exhibit 4) in support of each undertaking identified in List B. Program undertakings that have adverse effects on historic properties will be summarized in the annual report. SHPO will respond within 60 days of annual report submission, regarding adequacy of the report. ODOT will notify the Tribes of the availability of the annual report.

F. Agreement Evaluation. ODOT, FHWA and SHPO will meet five (5) years after the execution of this Agreement, or as necessary, to evaluate this Agreement to

suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under this Agreement.

G. Emergency Situations. ODOT shall, on behalf of FHWA, comply with the requirements of 36 CFR 800.12 if an emergency situation arises. Archaeological investigations in emergency situations will conform to the July 2006 Operational Notice *Archaeological Guidance for Hazardous Material Spills and Emergency Situations* (MAI #180-01) or its successor.

H. Post-Review Discoveries. ODOT shall, on behalf of FHWA, comply with the requirements of 36 CFR 800.13 if a post-review discovery is made. ODOT will coordinate with FHWA and work directly with SHPO and the Tribes to evaluate discoveries as needed and move forward. ODOT will also comply with Section 00290.50 of ODOT's *Oregon Standard Specifications for Construction* and the procedures for inadvertent discovery in the ODOT *Archaeology Manual.* If the discovery is made on Federally managed lands, ODOT will notify the authorized land manager.

I. Treatment of Human Remains. Historic and prehistoric human remains are subject to protection under Oregon Revised Statutes Sections 97.745 and 97.750. The treatment of human remains will conform to the ODOT Archaeology Manual and other guidance materials published by ODOT and SHPO, except for remains discovered on Federally managed lands, which will be treated by the authorized land manager.

J. Duration. This agreement shall remain in effect for a period of fifteen (15) years after the date it takes effect, unless it is terminated prior to that time. Ninety (90) days prior to the conclusion of the fifteen-year period, ODOT will notify all parties in writing. If there are no objections from the signatories, the Term of the Agreement will automatically be extended for an additional five (5) years. This agreement may be extended for additional 5 year periods if there are no objections from the signatories. If any party objects to extending the Agreement, or proposes amendments, ODOT will consult with the parties to consider amendments or other actions to avoid termination.

K. Amendment. Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such an amendment. The Agreement may only be amended upon written concurrence of all signatory parties.

L. Termination. Any party to this agreement may terminate the agreement by providing thirty calendar days notice in writing to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments and other actions that would avoid termination.

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Execution and implementation of this Agreement evidence that the FHWA has afforded the ACHP an opportunity to comment on the Federal-Aid Highway Program in Oregon and that FHWA has taken into account the effects of the Program on historic properties in Oregon.

FEDERAL HIGHWAY ADMINISTRATION

Phillip A. Ditzler, Division Administrator — Date: 12/19/2011

OREGON STATE HISTORIC PRESERVATION OFFICE

Roger Roper, Deputy State Historic Preservation Officer — Date: 12-15-11

OREGON DEPARTMENT OF TRANSPORTATION

Matthew Garrett, Director — Date: 12-19-11

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler, Executive Director — Date: 12/23/11

EXHIBIT 1. Sample Summary Tribal Consultation Spreadsheet

ODOT provides copies of Tribal Consultation Spreadsheets to participants in advance of Tribal Coordination meetings. The spreadsheet is updated following completion of the meeting and forwarded to FHWA and SHPO.

Meeting Date and Time: November 2, 2011, 10:30 AM

Meeting Location: Tribal Offices, 1245 Fulton Avenue, Coos Bay, Oregon

Attendees and Agency Representation: Kurt Roedel (ODOT), Tribal Member (Tribe), Chris Bucher (FHWA), Dennis Griffin (SHPO)

Key Number	Federal Aid Number	Project Name	City, County	Township, Range, Section	Quad	Estimated Construction Start Date	Previous Tribal Comments	Project Notes	Updated Tribal Comments
16133	S062(035)PE	OR 126: Mystery Road-Horseshoe Creek	Florence, Lane	18S, 12W, 25, 26, 30 18S, 11W, 10, 11, 16, 19, 20, 21	Florence , Mercer Lake, Tiernan	Spring 2012	No comments from previous meetings	Pavement Overlay, Subgrade Stabilization, Sign Replacement, Guardrail End Replacement. ODOT will prepare a PA Memo.	General comments. CR Manager will provide letter clarifying Tribes' comments. 11/5/11, received letter.

Notes compiled on November 4, 2011 by Kurt Roedel, ODOT Archaeologist, 503-986-6571, kurt.roedel@odot.state.or.us

EXHIBIT 2. Section 106 Programmatic Agreement Annual Report Cover Letter

March 1, 2012

Mr. Roger Roper
Deputy State Historic Preservation Officer
Oregon State Historic Preservation Office
725 Summer Street, NE, Suite C
Salem, OR 97310-1271

Ms. Carol Legard
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Ms. Michelle Eraut
Environmental Program Manager
Federal Highway Administration
530 Center Street, NE, Suite 420
Salem, OR 97301

Mr. Roper, Ms. Legard and Ms. Eraut:

Attached is the annual report for the 2011 calendar of the projects processed under the Section 106 Programmatic Agreement (PA) executed by FHWA, ODOT, SHPO and the ACHP. The PA outlines this provision of an annual listing of all projects reviewed under the provisions of the PA that are excluded from formal Section 106 review, along with findings for these projects. The annual report also includes a listing of all projects considered "undertakings" under 36 CFR 800.

The projects reviewed and processed under the PA are enumerated in the attached list. A copy of the internal finding document prepared for each project is also included. The ## archaeological and ## built environment memoranda prepared in 2011 are also included for your review.

As outlined in our PA, we look forward to your acknowledgement of receipt and sufficiency of the information we have provided within the next 60 days. Please let me know if upon your review there are any questions or if you would like to meet to discuss the work we completed in 2011.

Sincerely,

James B. Norman
Environmental Planning Unit Manager

Attachments:

- Listing of Programmatic Agreement A List Projects
- Listing of Programmatic Agreement B List Projects
- Section 106 Findings Memos Prepared in Support of B List Projects
- Listing of Adverse Effects Findings in 2011

EXHIBIT 2. Section 106 Programmatic Agreement Annual Report Template

2011 Section 106 Programmatic Agreement Report

Listing of Projects Meeting Criteria of A List of Programmatic Agreement

Key Number	Federal Aid Number	Date ODOT Determination Made	Project Name	County	ODOT Cultural Resources Reviewer	Discipline	Project Notes
13162	C009(057)	7/14/2010	Canaan Road Guardrail	Columbia	Robert Hadlow	Built	
13162	C009(057)	7/9/2010	Canaan Road Guardrail	Columbia	Mary Turner	Archaeology	

Listing of Projects Meeting Criteria of B List of Programmatic Agreement, Section 106 Documentation Memo Included

Key Number	Federal Aid Number	Date ODOT Determination Made	Project Name	County	ODOT Cultural Resources Reviewer	Discipline	Project Notes

Listing of Projects Meeting Criteria of Stipulation 4C of Programmatic Agreement

Key Number	Federal Aid Number	Date ODOT Determination Made	Project Name	County	ODOT Cultural Resources Reviewer	Discipline	Project Notes

Summary of Adverse Effect Findings in 2011

Key Number	Federal Aid Number	Project Name	County	MOA Signatories	Date of MOA	Summary of Commitments

EXHIBIT 3. FINDING OF EFFECT TEMPLATE

Insert Date

Insert County

Insert Quads

T, R, Section

Roger Roper
Deputy State Historic Preservation Officer
State Historic Preservation Office
725 Summer Street NE, Suite C
Salem, OR 97310-1271

Subject: **Request for Concurrence**
Finding of insert No Adverse Effect or Adverse Effect
Insert Project
Insert County, Oregon
ODOT Key No. #
Federal-Aid No. *###(###)

Dear Mr. Roper:

The Oregon Department of Transportation (ODOT) prepared the following letter in compliance with Section 106 of the National Historic Preservation Act. The letter includes a combined Finding of insert No Adverse Effect or Adverse Effect for historic properties (built environment and archaeological resources) for insert project name.

Project Description:
ODOT proposes to insert project description and location information.

Consulting Parties:
Describe how consulting parties were identified. Provide a list of all Tribes and other consulting parties for the undertaking.

Summary of Resources Present:
List of cultural properties included in attachments, short summary of resources and any individual findings.

Example, "there were 13 cultural properties evaluated under section 106, 5 of which resulted in findings of no effect, 7 of which resulted in findings of no adverse effect, and one (Drawmer Barn) resulting in a finding of adverse effect. Project effects on the 13 cultural properties include minor RW acquisition from 3 properties, relocation of existing fences at 4 properties, and displacement of the Drawmer Barn. Detailed descriptions of each cultural property, methodology for resource identification and evaluation, and individual evaluation of the project's effects on each resource are provided in the attached supporting documentation."

Finding of Effect:

Include the following information when project information has been provided to SHPO

previously and the statement is applicable. On [date] ODOT provided to SHPO a Finding of [state finding] for [state propery/ties]. SHPO provided concurrence on [date]. The project description and scope has not changed since that SHPO concurrence.

Application of Section 106 Criteria for Identification and Evaluation of Historic Properties [36 CFR 800.4 and 5] indicates a finding of insert "No Adverse Effect" or "Adverse Effect" for the insert project name here. ODOT, acting as an agent of the Federal Highway Administration, requests your concurrence with a FINDING OF insert NO ADVERSE EFFECT or ADVERSE EFFECT on historic properties) for the project. All supporting documentation is attached.

If you have any questions, please contact insert Operations Engineer with FHWA, at (503) 316-####, or James Norman, Environmental Planning Unit Manager with ODOT, at (503) 986-3514.

Sincerely,

James B. Norman
Environmental Planning Unit Manager
ODOT Geo-Environmental Section

The State Historic Preservation Office concurs that the insert project name here will have insert No Adverse Effect or Adverse Effect on Historic Properties (Built Environment).

SHPO Official (Built Environment) **Date**

The State Historic Preservation Office concurs that the insert project name here will have insert No Adverse Effect or Adverse Effect on Historic Properties (Archaeology).

SHPO Official (Archaeology) **Date**

List of Attachments:
May include but are not limited to:
Determinations of Eligibility
Finding of Effect
Cultural Resources Reports

Copies with attachment to:
FHWA Operations Engineer
Include list here, RECs, Tribes, etc.

Copies without attachment:
Include list here, ODOT staff, etc.

EXHIBIT 4. Section 106 Documentation Template for B List and Stipulation 4C Activities

Note: These clearance memos must be produced on ODOT letterhead.

DATE: [*insert date*]

FROM: John Doe, Cultural Resources Specialist [*indicate agency or company*]
[*insert "Historic Resource" or "Archaeological Resources" here*]

SUBJECT: Section 106 Programmatic Agreement Memo [*insert List B number*]
[*Section 106 Finding*]
[*insert project name*]
[*insert project location*]
[*insert project city and county*]
[*insert key number*]
[*insert federal-aid number*]

[*insert TRS in box here*]

Quadrangle
T, R, Section

[*Insert a complete project description, including the scope of work, project limits, and description and map of the Area of Potential Effect*]

John Doe, [*indicate agency or company*] Cultural Resources Specialist, surveyed the project area on [*insert date*]. [*insert description of methodology*]. This survey identified [*insert number*] cultural resources in addition to those previously documented at the SHPO that include SHPO # [*insert appropriate site numbers*] for [*insert county*]. The following resources within the project APE have been previously determined eligible for the National Register or, based on our analysis, may be eligible: [*list resources*].

According to the Programmatic Agreement Regarding Implementing Section 106 of the National Historic Preservation Act for the Federal-Aid Highway Program in Oregon executed [*insert date of final signature*], the proposed project does not require formal SHPO review on a project level, but will be reviewed by SHPO with the Programmatic Agreement's annual report. The [*indicate ODOT or company*] Cultural Resources Staff, who meet the requirements of 36 CFR Part 61, Appendix A in the fields of history, architectural history, or archaeology reviewed the project using the standards set forth in Section 106 of the National Historic Preservation Act (16 USC 470f).

ODOT's internal review of the findings resulted in the following determinations:
[*per use of the PA, discuss how the project would have no or minimal potential to cause effects to the following historic properties*].

ODOT internally reviewed the proposed undertaking under Stipulation 5 List [*associated number/s from /B list*] of the Programmatic Agreement dated [*insert date of final signature*]. [insert name] is the lead Cultural Resources reviewer for this project. For further information, contact [*insert* him *or* her] at [*insert phone number*]. [*include contact information for ODOT Cultural Resources Specialist*].

_____ _____

ODOT Qualified Cultural Resources Specialist Date

Copies to:
[*indicate recipients: FHWA Operations Engineer, project file, SHPO Tracking File, and appropriate ODOT staff*]

Attachments:
[*insert maps of area and APE (mandatory), insert photographs as required, insert historic resources study table with address, condition of resources, preliminary eligibility based on research and physical evidence, image of resources*]

APPENDIX A:
DEFINITION OF TERMS

Areas of Low Archaeological Potential: Defined by ODOT Archaeologists based on knowledge of known resources, previous landscape disturbances, landforms and consultation.

Archaeologist: A "Qualified Archaeologist" is an individual who meets the Secretary of the Interior's qualifications as defined in 36 CFR 61, Appendix A.

Federal-Aid Highway Program: The program, administered by the Federal Highway Administration that provides financial and technical assistance to the States to construct and improve the transportation system. The Oregon Division of FHWA is responsible for the Federal-Aid Highway Program in the State of Oregon.

Geotechnical Investigations: Includes drilling and auguring up to 12 inches in diameter and the use of existing access roads.

In-Kind Replacement: For the purposes of this agreement, In-Kind Replacement is defined as the replacement of historic features with matching historically correct features of appearance, type, material and craftsmanship.

Interconnection Devices: Electronic synchronization of flashing railroad signalization with adjacent traffic signalization. (Manual on Uniform Traffic Control Devices, Chapter 8.)

Improved Right-of-Way: Right-of-way disturbed and/or developed prior to construction including paved roadways, shoulders, clear zones, cut and fill slopes, curbs, drainage systems and medians.

Minor Ground Disturbance: In areas of low archaeological potential, alteration of the landscape that does not appreciably change the landform or alter large portions of the substrate. Examples include: (1) the installation of structures with a small below-ground footprint, such as signs or approved Manual on Uniform Traffic Control Devices (MUTCD) sign arrays; and (2) surface grading or shallow installations on relatively flat ground, including installations of bio-swales, grading for surface runoff, excavation for sidewalk construction or other similar activities.

Minor Bridge Rehabilitation: Any activity that does not alter the qualities that make a bridge eligible for listing in the National Register.

Qualified Cultural Resources Specialists: Includes an archeologist, architectural historian, and historian meeting the qualifications established in 36 CFR Part 61, Appendix A.

Railroad Warning Devices: Signage, including passive signs indicating approach to railroad crossing and active flashing lights indicating railroad crossing, and active gates

which lower and raise for safety at railroad crossings. (Manual on Uniform Traffic Control Devices, Chapter 8.)

Road Prism: The three-dimensional area of a road that has been previously disturbed by roadway construction. This includes ditches, cuts, and fills on either side of the roadway and marked by the toe of the back slope.

Tribes: Federally recognized resident and non-resident Tribes of Oregon.

APPENDIX B:
STANDARDS, GUIDELINES, AND REGULATIONS

The following list of standards, guidelines, and regulations are relevant to this Agreement and its purposes. This list is not exhaustive, other laws, regulations, standards and guidelines will be used as appropriate.

- Advisory Council on Historic Preservation, July 1, 2011 guidance: *Limitations on the Delegation of Authority by Federal Agencies to Initiate Tribal Consultation Under Section 106 of the National Historic Preservation Act.*
- Secretary of the Interior's Standards for the Treatment of Historic Properties, July 1997, US Department of the Interior, National Park Service (36 CFR 68);
- National Historic Preservation Act of 1966 as amended (16 USC 470);
- Professional Qualification Standards (36 CFR Part 61, Appendix A);
- Secretary of the Interior's Standards and Guidelines for Identification and Evaluation, September 1983, US Department of the Interior, National Park Service (48 FR 44720-26);
- Guidelines for Evaluating and Registering Archaeological Properties, December 2002, US Department of the Interior, National Park Service;
- Guidelines for Evaluating and Documenting Traditional Cultural Properties, September 1995, US Department of the Interior, National Park Service;
- Protection of Historic Properties, revised August 5, 2004 (36 CFR 800);
- State of Oregon Archaeological Survey and Reporting Standards;
- Oregon SHPO's Guidelines for Conducting Field Archaeology in Oregon;
- Oregon SHPO's On-Line Site Form;
- Archaeological Sites and Historical Materials (ORS 390.235 et seq);
- Archaeological Objects and Sites (ORS 358.905);
- Title 23, United States Code – Highways;
- ODOT *Archaeology Manual*;
- ODOT *Cultural Resources Manual*; and
- ODOT *Archaeological Guidance for Hazardous Material Spills and Emergency Situations* (MAI #180-01).
- ODOT's *Government to Government Policy*