

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT,
THE PUERTO RICO STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND
THE PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY
REGARDING
THE SECTION 106 PROCESS FOR THE TRANSPORTATION PROGRAM IN
PUERTO RICO**

WHEREAS, Federal Highway Administration (FHWA) implements the Federal-aid Highway Program (Program) in Puerto Rico by funding and approving transportation projects that are administered by Puerto Rico Highway and Transportation Authority (PRHTA); and

WHEREAS, Program-funded transportation projects are undertakings subject to Section 106 of the National Historic Preservation Act (NHPA) [54 United States Code (U.S.C) § 306108] and its implementing regulations at 36 Code of Federal Regulations (CFR) Part 800 hereafter referred to as “Section 106”; and

WHEREAS, Puerto Rico FHWA Division Administrator is responsible for ensuring that the Program in Puerto Rico complies with Section 106 and therefore, FHWA is a signatory to this Programmatic Agreement (PA); and

WHEREAS, the U.S. Army Corps of Engineers (USACE) is responsible for regulating a variety of activities through its permitting authority that relate to transportation undertakings, such as permits issued under the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act (33 USC 1251 et seq.); and

WHEREAS, USACE has determined that issuance of permits for transportation undertakings funded through the Program, and through non-Program funding sources, may be undertakings subject to the Section 106 requirements and therefore, USACE is a signatory to this PA; and

WHEREAS, the Puerto Rico State Historic Preservation Officer (SHPO) is authorized pursuant to 36 CFR §§ 800.2(c)(1)(i) and 800.6(b)(1)(i), to advise and assist federal agencies in carrying out their historic preservation responsibilities and; therefore, is a signatory to this PA; and

WHEREAS, PRHTA administers Program-funded undertakings throughout Puerto Rico and plays a substantial role in this PA; therefore, FHWA has invited PRHTA to be a signatory to this PA; and

WHEREAS, FHWA and USACE have determined that transportation undertakings, may have an effect upon historic properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register); and

WHEREAS, the signatories have developed this PA pursuant to 36 CFR § 800.14(b) in order to establish a program alternative for taking into account the effects on historic properties of transportation undertakings in Puerto Rico that are funded through the Program and through non-Program funding sources that require a permit issued by USACE, and for affording the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on undertakings covered by this PA; and

WHEREAS, FHWA has notified ACHP about the potential for effects resulting from transportation undertakings in Puerto Rico that are funded through the Program and through non-Program funding sources that require a permit issued by USACE, and has invited ACHP to participate in developing this PA as a signatory and ACHP has accepted the invitation; and

WHEREAS, FHWA has notified other agencies in Puerto Rico and the public about the PA, and has requested their comments, and has taken any comments received into account; and

WHEREAS, the definitions at 36 CFR § 800.16 apply throughout this PA, as do the supplemental definitions in Appendix A of this PA.

NOW, THEREFORE, the signatories agree that transportation undertakings in Puerto Rico that are funded through the Program administered by FHWA, and through non-Program funding sources that require a permit issued by USACE, shall be carried out in accordance with the following stipulations in order to take into account the effects of FHWA's and USACE's respective undertakings on historic properties in Puerto Rico and that these stipulations shall govern compliance with Section 106.

STIPULATIONS

The FHWA and USACE, with the assistance of PRHTA, shall ensure the following measures are carried out:

I. APPLICABILITY AND SCOPE

- A. This PA sets forth the process by which FHWA, with the assistance of PRHTA, will meet its responsibilities for all Program-funded transportation undertakings in Puerto Rico in compliance with Section 106 of the NHPA (54 U.S.C. § 306108). The PA also establishes a process by which USACE, with assistance from

PRHTA, will meet its Section 106 responsibilities for all non-Program funded PRHTA transportation undertakings in Puerto Rico that require a permit issued by USACE.

- B. The FHWA will be the Lead Federal Agency for all Program-funded undertakings in Puerto Rico and, with the assistance of PRHTA, will be responsible for assuring the Section 106 requirements are met.
- C. The USACE will be the Lead Federal Agency for all non-Program funded PRHTA transportation undertakings in Puerto Rico that require a permit issued by USACE and, with the assistance of PRHTA, will be responsible for ensuring the Section 106 requirements are met.
- D. When Program-funded undertakings require a permit issued by USACE, FHWA will be the Lead Federal Agency for the purposes of this PA. FHWA will coordinate with USACE to ensure their mutual Section 106 responsibilities are met through this PA.
- E. Through this PA, FHWA and USACE authorize PRHTA to carry out certain Section 106 consultations on their behalf, as further stipulated below. PRHTA will coordinate with FWHA and USACE in carrying out its responsibilities under the terms of the PA.

II. RESPONSIBILITIES

- A. Lead Federal Agency Responsibilities
 - 1. Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(a)(1-4), FHWA and USACE, as the Lead Federal Agencies, are legally responsible for ensuring that the terms of this PA are carried out and for all findings and determinations made pursuant to this PA by PRHTA on behalf of FHWA and USACE. At any point in the Section 106 process, FHWA or USACE, as applicable, may inquire as to the status of any undertaking carried out under the authority of this PA and may participate directly in any undertaking at its discretion. FHWA and USACE will be referred to individually as the “Lead Federal Agency” or collectively as the “Lead Federal Agencies” throughout this PA.
 - 2. The applicable Lead Federal Agency, with PRHTA, will consult with SHPO to identify consulting parties associated with an undertaking. The consulting parties may include, but are not limited to, communities, organizations, or individuals who have an interest in the undertaking and its effects on historic properties.
 - 3. The applicable Lead Federal Agency will review and approve findings of No Adverse Effect and Adverse Effect proposed by PRHTA.

4. The applicable Lead Federal Agency will be responsible for resolving any adverse effects to historic properties and will continue to consult with the consulting parties to prepare a Memorandum of Agreement (MOA) or a project-specific Programmatic Agreement (PA) for that purpose.
5. The applicable Lead Federal Agency will conduct all formal consultation with ACHP in accordance with 36 CFR Part 800.
6. The Lead Federal Agencies will invite the ACHP to attend the annual meeting to evaluate implementation of this PA pursuant to Stipulation XII.C.
7. The applicable Lead Federal Agency will be responsible for resolving disputes and objections pursuant to Stipulation XIV of this PA.

B. PRHTA Responsibilities

1. PRHTA will assist the applicable Lead Federal Agencies in carrying out the following tasks with respect to undertakings covered by this PA including drafting the forms in Attachment A:
 - a. Establish whether an undertaking is a type of activity that does not have the potential to cause effects on historic properties, pursuant to 36 § CFR 800.3(a)(1).
 - b. Conduct public involvement activities.
 - c. Screen undertakings for exemption.
 - d. Identify and solicit input from consulting parties.
 - e. Establish the Area of Potential Effects (APE) in consultation with SHPO.
 - f. Conduct inventories and identify historic properties, as needed.
 - g. Determine the National Register eligibility of properties within the APE in consultation with SHPO.
 - h. Assess the effects of an undertaking.
2. PRHTA will define each undertaking in sufficient detail so that Section 106 review can be conducted. Section 106 review should begin at the earliest stages of transportation project scoping or design.
3. PRHTA will assist the applicable Lead Federal Agencies in identifying any party entitled to be consulted on an undertaking, including other federal agencies, local agencies, and local governments whereupon, the applicable Lead Federal Agency will invite these parties to participate as consulting parties.
4. PRHTA will make findings of No Historic Properties Affected (Stipulation V.E.1.a. and b).
5. PRHTA will propose findings of No Adverse Effect and Adverse Effect and

submit these findings to the applicable Lead Federal Agency for review and approval.

C. SHPO Responsibilities

1. SHPO will consult with the applicable Lead Federal Agency and PRHTA on identification of historic properties (Stipulation V.C), evaluation of National Register eligibility (Stipulation V.D), assessment of effects and resolution of adverse effects (Stipulation V.E), according to the terms of this PA.
2. SHPO will respond to requests from the applicable Lead Federal Agency, PRHTA, or their designee (such as consultants to the Lead Federal Agency or PRHTA), for information about historic properties held by SHPO. Only Lead Federal Agency staff, PRHTA staff, or their designee, who are qualified professionals as defined in Stipulation III, will be allowed access to historic property information held by SHPO. Access to historic property information may be through online systems or hard copy site files, Geographic Information Systems (GIS) data, survey reports, or other records.
3. As identified under Stipulation XII, Monitoring and Reporting, SHPO will review activities carried out pursuant to this PA, which includes reviewing summary reports on 1) projects exempted from Section 106 review in accordance with Stipulation V, and 2) project scope changes that did not require additional consultation with SHPO, in accordance to Stipulation VI.A. SHPO will participate in the annual meeting to evaluate implementation of this PA.

D. ACHP Responsibilities

1. ACHP will be notified of findings of adverse effect by the applicable Lead Federal Agency and will be invited to participate in resolving the adverse effect of an undertaking in accordance to 36 CFR § 800.6(a)(1).
2. The Lead Federal Agencies will invite ACHP to attend, at their discretion, the annual meeting to evaluate implementation of this PA, according to Stipulation XII. C.
3. ACHP will participate, in accordance with Stipulation XIV, in the resolution of disputes that may occur through the implementation of this PA.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. Activities prescribed by this PA that involve the identification, evaluation, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such activities in the form of reports, standard 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).

- B. PRHTA will use SOI qualified staff or SOI qualified consultants to carry out activities stipulated in the PA, and may use the services of persons who do not meet these qualification standards provided their activities are conducted under the direct supervision of a person who does meet the standards. If PRHTA uses a consultant to carry out activities stipulated in the PA, PRHTA will submit the resume of and proposed contract for the consultant to the Lead Federal Agencies for their determination that the consultant is a qualified professional as defined in this stipulation, and the Lead Federal Agencies will have 14 days to determine that the consultant is a qualified professional. Once approved by the Lead Federal Agencies, PRHTA may use the consultant to carry out activities stipulated in the PA.
- C. For the purposes of this PA, SOI qualified PRHTA staff and SOI qualified consultants will hereafter be referred to individually as “a qualified professional” or collectively as “qualified professionals.”
- D. Should PRHTA no longer be able to carry out its responsibilities using qualified professionals:
 - 1. PRHTA will notify the signatories within 48 hours. Following notification, PRHTA’s responsibilities in the PA will be suspended, and the Lead Federal Agencies will assume all responsibilities delegated to PRHTA through this PA;
 - 2. The signatories will meet within 30 days of notification to determine how FHWA and USACE will proceed in terms of carrying out the terms of this PA;
 - 3. PRHTA may resume its role under the PA once it is able to use qualified professionals; and
 - 4. If after 90 days of notification, PRHTA is still not able to use qualified professionals, any signatory may invoke Stipulation XV to amend the PA or Stipulation XVI to terminate the PA.

IV. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Additional Consulting Parties

- 1. Additional consulting parties will be identified in writing by PRHTA in consultation with SHPO pursuant to 36 CFR § 800.3(f) and their participation in undertakings covered under this PA will be governed by 36 CFR § 800.3(f)(3). Individuals and organizations with a demonstrated interest in an

undertaking will be invited by PRHTA, in consultation with the applicable Lead Federal Agency, to participate in the Section 106 process. Any land-managing agency whose land may be affected by an undertaking will be invited by PRHTA to participate in the Section 106 process. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by PRHTA and the applicable Lead Federal Agency in consultation with SHPO.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this PA will be governed by environmental compliance procedures and public involvement plans issued by the applicable Lead Federal Agency and PRHTA. Public involvement and the release of information hereunder will be consistent with 36 CFR §§ 800.2(d), 800.3(e), and 800.11(c)(1 and 3).
2. PRHTA will 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 undertakings governed by environmental compliance procedures that do not routinely require public review and comment, appropriate public involvement, pursuant to 36 CFR §§ 800.2(d) and 800.3(e), 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. PRHTA will make FHWA, USACE and SHPO aware of all public controversy as it relates to the historic properties potentially affected by a proposed undertaking.

V. PROJECT REVIEW

A. Initiation of Section 106

1. PRHTA will be responsible for establishing the undertaking and initiating the Section 106 review process. A qualified professional will determine if the undertaking is a type of activity that does not have the potential to cause effects on historic properties. Where the qualified professional determines the undertaking is a type of activity that does not have the potential to cause effects to historic properties pursuant to 36 CFR § 800.3(a)(1) (and as defined in Appendix A of this PA), the applicable Lead Federal Agency will have no further Section 106 obligation and PRHTA will document this finding to the project file. Where the qualified professional determines the undertaking is a type of activity that does have the potential to cause effects on historic properties, the undertaking will be reviewed in accordance with the Section

106 review process presented in Stipulations V.B through V. E below.

B. Screened Projects

1. The undertakings classified in Appendix B (Screened Undertakings Exempted from Further Review) will require no further review under this PA when any applicable conditions presented in Appendix B are met and a qualified professional determines that no historic properties will be affected by the undertaking. PRHTA will document all undertakings exempted from further review using a standard form prepared by PRHTA and SHPO within six months of the effective date of this PA. Prior to the preparation of this standard form and all standard forms to be prepared pursuant to the stipulations of this PA, PRHTA will use current forms of communication and reporting with SHPO on all Section 106 decisions and findings.
2. Any undertaking that is not listed in Appendix B or does not meet the conditions for review as an exempted undertaking, will be reviewed in accordance with Stipulation V.C through V.E below. The conditions for review as an exempted undertaking are listed in Appendix B as bullet points under each category of project or projects. Additional conditions associated with historic roads are discussed below in V.B.3, and are also included in the beginning discussion of exempted undertakings in Appendix B.
3. If an undertaking listed in Appendix B occurs along, crosses or is adjacent to a National Register-listed or eligible historic road, or a historic road that has yet to be evaluated in terms of National Register eligibility, PRHTA's qualified professional will consult with SHPO on the applicability of the use of Appendix B for the undertaking. PRHTA's qualified professional will prepare a standard report (the format of this standard report will be prepared by PRHTA and SHPO within twelve months of the effective date of this PA) that:
 - a. Justifies the application of Appendix B to the undertaking involving the historic road, and
 - b. Documents that all the additional required conditions associated with the undertaking as listed in Appendix B have been met.

PRHTA's qualified professional will submit the report to SHPO. If SHPO does not respond within 30 calendar days from receipt of the report, PRHTA will assume SHPO has no objection to the use of Appendix B for the undertaking, and the undertaking will require no further Section 106 review. If SHPO concurs with PRHTA's proposed use of Appendix B for the undertaking, then the undertaking will require no further Section 106 review. If SHPO does not concur with the applicability of Appendix B to the undertaking, the undertaking will be reviewed in accordance with Stipulation V.C through V.E below.

C. Identification of Historic Properties

1. PRHTA will define the APE and will document the APE using an APE consultation form prepared by PRHTA and SHPO within six months of the effective date of this PA. PRHTA will submit the APE form to the applicable Lead Federal Agency, and once approved by the applicable Lead Federal Agency, PRHTA will submit the APE form to SHPO. If SHPO does not respond within 30 calendar days from receipt of the APE form, the Lead Federal Agency and PRHTA will assume SHPO has no objection to the APE. If SHPO has objections, the applicable Lead Federal Agency and PRHTA will consult with SHPO and resolve the objection following Stipulation XIV.
2. PRHTA will identify the consulting parties to the undertaking and the applicable Lead Federal Agency will invite them to participate in the Section 106 review in accordance with 36 CFR § 800.2(c) and 36 CFR §§ 800.3(c) and (f). A qualified professional will prepare or oversee preparation of invitation letters to the consulting parties. The applicable Lead Federal Agency will review the invitation letters and send out the letters upon approval.
3. PRHTA will identify historic properties that may be located within an undertaking's APE in accordance with 36 CFR §§ 800.4(a)(2) and (3) and 36 CFR § 800.4(b). A qualified professional will determine whether a survey is appropriate. If a survey is required, PRHTA will arrange for a survey to be conducted by a qualified professional.
4. If a survey identifies potential historic properties within the APE, the applicable Lead Federal Agency, with PRHTA's assistance, will ensure that a survey report meeting current SHPO reporting standards is prepared. The applicable Lead Federal Agency, or PRHTA on behalf of the agency, will submit the survey report to the consulting parties for a 30-calendar day review from receipt, along with National Register eligibility determinations, made in accordance with Stipulation V.D.
5. If a survey is conducted and no cultural resources are identified within the APE, PRHTA will ensure that a survey report meeting current SHPO reporting standards is prepared documenting the negative findings. PRHTA will issue a finding of No Historic Properties Affected, in accordance with Stipulation V.E.1.a. and b. If SHPO does not object within 30 days, no further consultation will be required.
6. Identification of historic properties will be consistent with the SOI's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44720-26).

D. Evaluation of National Register Eligibility

1. PRHTA, on behalf of the applicable Lead Federal Agency, will evaluate the historic significance of identified potential historic properties in accordance with 36 CFR § 800.4(c)(1) following the National Register Bulletin *How to Apply the National Register Criteria of Evaluation*. A qualified professional will conduct the National Register evaluation.
2. When previously evaluated cultural resources are identified within an undertaking's APE, a qualified professional will review those previous evaluations to assess whether the previous evaluations are still valid. Such review may require a field visit. If the previous evaluations are not valid, PRHTA will recommend the applicable Lead Federal Agency seek formal re-evaluation in consultation with SHPO, and all other consulting parties on a revised determination of eligibility.
3. The applicable Lead Federal Agency, with PRHTA's assistance, will submit determinations of National Register eligibility and supporting documentation to the consulting parties to the undertaking for review in accordance with 36 CFR § 800.4(c)(2). The consulting parties will have 30 calendar days of receipt to submit their comments to the Lead Federal Agency.
4. If the applicable Lead Federal Agency and SHPO agree regarding the agency's National Register eligibility determinations, the applicable Lead Federal Agency may proceed to the next step in this PA. If the applicable Lead Federal Agency and SHPO do not agree, and the disagreement cannot be resolved, following the procedures in Stipulation XIV, the applicable Lead Federal Agency will request a formal determination from the Keeper of the National Register in accordance with 36 CFR § 800.4(c)(2). The Keeper's determination on National Register eligibility will be final.

E. Assessment of Effects

1. No Historic Properties Affected.
 - a. For those undertakings not exempted under Stipulation V.B in which there are: a) no previously recorded historic properties within the APE, and b) no newly identified historic properties within the APE, PRHTA will make a finding of No Historic Properties Affected pursuant to 36 CFR § 800.4(d)(1).
 - b. PRHTA will document the finding using a standard form for findings of No Historic Properties Affected, to be prepared by PRHTA and SHPO within six months of the effective date of this PA. If SHPO does not object within 30 days, no further Section 106 review or consultation will be required.
 - c. If PRHTA finds there are historic properties identified within the APE,

that may be affected by the undertaking pursuant to 36 CFR § 800.4(d)(2), PRHTA will make a finding of effect in accordance with Stipulation V.E.2 or V.E.3 below, as applicable.

2. No Adverse Effect.
 - a. PRHTA will apply the Criteria of Adverse Effect to any historic properties in accordance with 36 CFR § 800.5(a)(1).
 - b. For those undertakings where historic properties may be affected, PRHTA will apply the Criteria of Adverse Effect in accordance with 36 CFR § 800.5(a). If PRHTA determines that the undertaking meets the conditions for a finding of No Adverse Effect pursuant to 36 CFR § 800.5(b), PRHTA will document this finding using a standard form for findings of No Adverse Effect, to be prepared by PRHTA and SHPO within six months of the effective date of this PA. PRHTA will submit documentation to the applicable Lead Federal Agency for review and approval. Upon approval by the applicable Lead Federal Agency, PRHTA will consult with SHPO and other consulting parties on the finding in accordance with 36 CFR § 800.5(c).
3. Adverse Effect
 - a. If PRHTA determines the criteria of adverse effect in 36 CFR § 800.5(a)(1) are met, and the undertaking will have an Adverse Effect to any historic properties, PRHTA will prepare documentation on the finding pursuant to 36 CFR 800.11(e), and will submit the finding and the documentation to the applicable Lead Federal Agency.
 - b. The applicable Lead Federal Agency will notify ACHP of the finding of Adverse Effect, providing the documentation required under 36 CFR 800.11(e), and will invite ACHP participation in resolving the adverse effects of the undertaking in accordance with 36 CFR § 800.6(a)(1).
 - c. The applicable Lead Federal Agency, with the assistance of PRHTA, will consult with SHPO, and other consulting parties, as appropriate, and ACHP, if participating, to resolve the Adverse Effect pursuant to 36 CFR § 800.6. The applicable Lead Federal Agency will enter into a MOA or project-specific PA for this purpose.

VI. CHANGES IN PROJECT SCOPE

- A. When there is a project scope change or a new project element is added to an undertaking after the completion of Section 106 consultation, the applicable Lead Federal Agency, with assistance from PRHTA, will assess the need for any additional consultation with SHPO. Additional consultation will not be required

under the following conditions:

1. There is no change to the originally defined and agreed upon APE (following the procedures in Stipulation V.C.1), and the change is within the limits of previous historic property identification efforts; and
 2. There is no change to the effects finding; and
 3. Less than 2 years have passed since historic properties, excluding archaeological resources, were identified within the originally defined and agreed upon APE (following the procedures in Stipulation V.C.1); or
 4. The project scope change is screened from further Section 106 review following Stipulation V.B.
- B. PRHTA will document that no additional consultation is required and will submit the documentation to the applicable Lead Federal Agency for review. Once documentation is approved by the applicable Lead Federal Agency, PRHTA will place the documentation in the project file.
- C. If the above conditions are not met, the applicable Lead Federal Agency, with assistance from PRHTA, will carry out Stipulation V.C through V.E, as applicable.

VII. EXEMPTION FOR POST-1945 CONCRETE AND STEEL BRIDGES

A. Post-1945 Concrete and Steel Bridges

1. PRHTA has identified post-1945 concrete and steel bridges having some exceptional quality, pursuant to the ACHP Program Comment on Post-1945 Concrete and Steel Bridges (Federal Register / Vol. 77, No. 222 / Friday, November 16, 2012). The list of post-1945 concrete and steel bridges with some exceptional quality is provided in Appendix C of this PA.
2. The applicable Lead Federal Agency, with assistance from PRHTA, will review projects involving post-1945 concrete and steel bridges having some exceptional quality, as well as those previously listed in or eligible for listing in the National Register or located in or adjacent to historic districts, following Stipulation V.D through V.E, as applicable.
3. No further Section 106 review will be required for any post-1945 concrete and steel bridges that are not on the list of bridges recognized as having some exceptional quality, pursuant to the ACHP Program Comment.

VIII. ADDITIONAL PROGRAM COMMITMENTS

The purpose of this stipulation is to provide a list of program commitments that will

enhance and improve the Section 106 compliance process for the transportation program in Puerto Rico. These program commitments include programmatic approaches to the identification, evaluation, and treatment of classes of historic properties; training for implementing this PA; and procedures for improving development and maintenance of an administrative record for Section 106 reviews and compliance. The signatories to this PA will work together to select and then implement these program commitments.

- Historic roads management plans
- Updating historic bridges and culverts inventories and development of management plans and/or programmatic agreements
- Preparation of a cultural resources' management manual for PRHTA staff.
- Development of interagency communications protocols
- Section 106 training, which would include training on the requirements and implementation of this PA
- Procedures for improved record and document sharing and distribution among the parties.
- Development of historic contexts for a class of properties.
- Preparation of treatment and management plans for a class of properties.

IX. EMERGENCY SITUATIONS

- A. For the purposes of this PA, emergencies are defined as occurrences that require emergency highway system and facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. These emergency situations may arise from flooding, ocean surges, landslides, extreme wind, or other natural phenomena.
- B. Repairs to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies or by the USACE in accordance with 33 CFR 325.2(e)(4).
- C. If an emergency repair project could affect historic properties, PRHTA will, in accordance with Stipulation V.B, determine if the emergency repair project is exempted from further review, as follows:
 1. If the project is listed in Appendix B, and the conditions for exemption are met, and a qualified professional determines the emergency repairs will have no effect to historic properties, the qualified professional will note this

determination for the project file and no further consultation will be required.

2. If the emergency repair is not listed in Appendix B, the PRHTA will notify SHPO in accordance with Stipulation IX.G, and the applicable Lead Federal Agency prior to any work taking place. SHPO and the Lead Federal Agencies will have 48 hours to respond to the notification. If no response is received, PRHTA will proceed with the emergency repair.
- D. A qualified professional will also determine if the proposed emergency repair involves a post-1945 concrete and steel bridge for which Section 106 consultation is waived in accordance with Stipulation VII, as follows:
1. If the emergency repair involves a property that is not on the list of post-1945 concrete and steel bridges with some exceptional quality, the qualified professional will note this determination for the project file and no further consultation will be required.
 2. If the qualified professional determines that a post-1945 concrete and steel bridge is on this list, and determines that the emergency repair may affect the property, PRHTA will notify SHPO in accordance with Stipulation IX.G, and the applicable Lead Federal Agency prior to any work taking place. SHPO and the applicable Lead Federal Agency will have 48 hours to respond.
- E. For projects where the repair must be made within the first 30 days of the declaration of the emergency by an appropriate authority, in response to immediate threats to life and property, the processing of environmental documentation will happen concurrently or after the fact. In these cases, PRHTA will comply with the procedures in this Stipulation to the extent possible, but the reviews may be conducted after the emergency work is completed.
- F. For projects taking longer than 30 days for repair after the declaration of the emergency by an appropriate authority, PRHTA, on behalf of the applicable Lead Federal Agency, will comply with the procedures in Stipulation V.C through V.E. PRHTA, however, may request an extension of the period for the repair project from the applicable Lead Federal Agency prior to the expiration of the 30 days.
- G. PRHTA, on behalf of the applicable Lead Federal Agency, will provide notification of an emergency action to SHPO using a standard form to be prepared by the PRHTA and SHPO within six months of the effective date of the PA. Notification may be transmitted by email or other electronic means, or by hand delivery, as agreed to by PRHTA and SHPO. The notice will be clearly and prominently marked as an emergency notification and will include an explanation of how the action meets the requirements for emergency as defined herein. The notice will also include a brief description of the eligibility and/or significance of the cultural resources involved, the nature, effect, and anticipated effect of the emergency action on the resources, and the anticipated time frame available for

comment.

- H. Where USACE is the applicable Lead Federal Agency it will follow 33 CFR § 325.2(e)(4) in declaring an emergency as defined. USACE will comply with these regulations in a manner that is consistent with the terms of this Stipulation. In declaring an emergency, USACE will inform FHWA, PRHTA and SHPO. PRHTA will notify SHPO following the notification requirements of Stipulation IX.G above.

X. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries.

1. When PRHTA's identification efforts indicate that historic properties are likely to be discovered during implementation of a project, PRHTA will prepare a discovery plan. PRHTA will submit the discovery plan to the applicable Lead Federal Agency and SHPO for a 30-calendar day review. PRHTA will consider any comments it receives from the review parties in completing the plan. The discovery plan will be included in any environmental documents, project plans and specifications, and project construction contracts.
2. All current PRHTA construction contracts include a clause on what a contractor must do when there is a post-review discovery. PRHTA will include a discovery clause, following the procedures detailed in Stipulation X.B below, in all future construction contracts.

B. Late Discoveries

For a discovery occurring after completion of reviews under this PA, PRHTA will ensure the following steps are carried out:

1. The construction contractor immediately ceases all ground-disturbing activity in the immediate area of the discovery and secures the discovery location from further disturbance.
2. The construction contractor notifies PRHTA. PRHTA will notify SHPO and the applicable Lead Federal Agency.
3. A qualified professional will inspect the discovery within 48 hours of the discovery and record its nature, extent, age, and integrity in sufficient detail to provide a recommendation on National Register eligibility and effect. Within 48 hours of the inspection, PRHTA will prepare a letter report on the discovery and submit the letter report to SHPO and the applicable Lead Federal Agency for review. The review parties will have 72 hours to provide comments.

4. If PRHTA recommends the discovery is not eligible for listing in the National Register, and the review parties agree, the applicable Lead Federal Agency will authorize the construction contractor to resume construction.
5. If PRHTA recommends the discovery is eligible for listing in the National Register eligible, and the property will be adversely affected by continued construction, PRHTA will include proposed treatment measures with the report. If the review parties agree, the applicable Lead Federal Agency will resolve the adverse effects by implementing the proposed treatment measures, and following treatment, will prepare a report. The applicable Lead Federal Agency will authorize the construction contractor to resume construction once any field work required for treatment is completed,
6. Should either SHPO or the applicable Lead Federal Agency not respond to PRHTA within the 72-hour comment period, PRHTA will assume the agency has no objection to its recommendation and will proceed accordingly.
7. If there is a dispute among PRHTA and the parties regarding the National Register eligibility of the discovery, the applicable Lead Federal Agency will resolve the dispute in accordance with Stipulation V.D.4. Disputes regarding the findings of effect and treatment will be resolved by the applicable Lead Federal Agency in accordance with Stipulation XIV.

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. If PRHTA has reason to believe that human remains may be encountered during construction, PRHTA will prepare a treatment plan and submit the plan to the applicable Lead Federal Agency and SHPO for review and comment. The review parties will have thirty (30) calendar days of receipt to provide their comments on the treatment plan
- B. If human remains are discovered during construction, and no treatment plan is in effect, PRHTA will ensure that the construction contractor immediately ceases all ground-disturbing activity in the immediate area of the discovery and secures the discovery location from further disturbance. At the same time, PRHTA will notify SHPO and the applicable Lead Federal Agency of the discovery.
 1. A qualified professional will inspect the human remains within 48 hours of the discovery. Within 48 hours of the inspection, PRHTA will document in a letter report, to the extent possible, the age and nature of the human remains and provide recommendations on the treatment of the human remains, and will submit the letter report to SHPO and the applicable Lead Federal Agency for comment.
 2. SHPO and the applicable Lead Federal Agency will have 72 hours to provide comments on the letter report and recommended treatment measures. Should

either SHPO or the applicable Lead Federal Agency not respond to PRHTA within the 72-hour comment period, PRHTA will assume the agency has no objection to its treatment recommendations and will proceed accordingly.

3. If SHPO and the applicable Lead Federal Agency respond within the 72-hour comment period, and agree to the proposed treatment measures, PRHTA will implement the treatment measures, and will prepare a letter report on the completed treatment measures for SHPO and applicable Lead Federal Agency. The applicable Lead Federal agency will authorize the construction contractor to resume construction once the treatment measures are completed.
4. If there is a dispute among PRHTA, SHPO and the applicable Lead Federal Agency regarding the treatment of the human remains, the applicable Lead Federal Agency will resolve the dispute in accordance with Stipulation XIV.

XII. MONITORING AND REPORTING

- A. PRHTA will provide the Lead Federal Agencies with any information the agencies consider necessary to ensure that PRHTA is adequately carrying out its responsibilities under the PA. Therefore, PRHTA agrees to provide the Lead Federal Agencies file access for the purposes of monitoring the effectiveness of this agreement.
- B. Every six months from the effective date of this PA, PRHTA will submit a summary report to the Lead Federal Agencies and SHPO. The report will provide information on 1) projects exempted from Section 106 review in accordance with Stipulation V.B, 2) projects requiring no further consultation or review in accordance with Stipulation V.E.1.a. and b, and 3) project scope changes that did not require additional consultation with SHPO, in accordance with Stipulation VI.A. PRHTA, in consultation with the Lead Federal Agencies and SHPO, will determine the format and content of the biannual report, within the first six months following implementation of this PA. The parties will also define dates/times of submittals and process for review and comment.
- C. The Lead Federal Agencies and PRHTA will arrange for an annual meeting with SHPO, to evaluate implementation of this PA. The evaluation meeting will take place within two months of the anniversary of the effective date of the PA. The Lead Federal Agencies will invite ACHP to attend the meeting, which may attend at its discretion.
- D. One month prior to the annual meeting, PRHTA will submit an annual report to the signatories on projects reviewed in accordance to Stipulation V.B, V.E.1.a. and b, and VI.A for the previous calendar year. PRHTA, in consultation with the Lead Federal Agencies and SHPO, will determine the format and content of the annual report within the first six months following implementation of this PA.

XIII. COOPERATING WITH OTHER FEDERAL AGENCIES

- A. Federal agencies that may have a role in Program-funded transportation projects in Puerto Rico in the future may join this PA as an invited signatory and meet their own Section 106 requirements following the requirements of the PA. The agency must submit the request to the FHWA Division Administrator in writing. Upon approval, the FHWA Division Administrator will notify the other signatories to this PA and will send a separate blank signature page to the agency for signature. The agency will then return the signed signature page to FHWA. If the signatories to the PA disagree with the decision to have the agency join the PA, FHWA and the other signatories will resolve the dispute according to Stipulation XIV.
- B. The name of any agency that becomes a signatory in accordance with Stipulation XIII.A will be added to the title of this PA and to a whereas declaration identifying the agency as a signatory to the PA. FHWA will provide a revised copy of the PA along with the agency's signed signature page to all parties. A formal amendment to the PA will not be necessary.

XIV. DISPUTE RESOLUTION

- A. All signatories to this PA should strive to address and resolve disagreements informally.
- B. If informal resolution cannot be achieved, any signatory to this PA may object in writing to the applicable Lead Federal Agency regarding any action carried out or proposed with respect to implementation of this PA. The applicable Lead Federal Agency will notify SHPO within 10 calendar days of receiving the objection, and the applicable Lead Federal Agency will initiate consultation with the objecting party to resolve the objection.
- C. If after initiating such consultation with the objecting party the applicable Lead Federal Agency determines that the objection cannot be resolved through consultation, the applicable Lead Federal Agency will forward all documentation relevant to the objection to ACHP, including the agency's proposed response to the objection.
- D. Within 30 calendar days after receipt of all pertinent documentation, ACHP will exercise one of the following options:
 - 1. Advise the applicable Lead Federal Agency that ACHP concurs with the agency's proposed response to the objection, whereupon the applicable Lead Federal Agency will respond to the objection accordingly;

2. Provide the applicable Lead Federal Agency with recommendations, which the agency will consider in reaching a final decision regarding its response to the objection; or
 3. Notify the applicable Lead Federal Agency that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment.
- E. The applicable Lead Federal Agency will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4), with reference only to the subject of the dispute. The applicable Lead Federal Agency will notify all signatories of its decision regarding the dispute.
- F. The applicable lead Federal Agency's responsibility to ensure that all actions under this PA that are not the subject of the dispute are carried out will remain unchanged.
- G. The public may object to any action carried out or proposed with respect to implementation of this PA provided the objection is submitted to the applicable Lead Federal Agency in writing. Upon receipt of an objection from a member of the public, the applicable Lead Federal Agency will inform PRHTA and SHPO and will consult to review the objection. Should any signatory determine that the objection is warranted, it may submit the objection for formal resolution following this Stipulation.

XV. AMENDMENT

- A. Any signatory to this PA may at any time propose amendments. Signatories will consult to consider the amendment. An amendment to the PA must be signed by all signatories.
- B. Each attachment to the PA may be individually amended through consultation among the signatories without requiring amendment of the PA, unless the signatories decide otherwise.

XVI. TERMINATION

- A. Any signatory may terminate this agreement provided the party proposing termination will notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should consultation result in an agreement on an alternative to termination, the PA signatories will proceed in accordance with that agreement.
- C. Should consultation fail, the signatory proposing termination may terminate the

PA by promptly notifying the other PA signatories in writing.

- D. Should the PA be terminated, FHWA and USACE will meet their respective Section 106 responsibilities pursuant to 36 CFR Part 800 for all individual undertakings.

XVII. CONFIDENTIALITY

The signatories acknowledge that information about historic properties may be subject to the provisions of Section 304 of the NHPA. Section 304 allows the applicable Lead Federal Agency to withhold from disclosure to the public, information about the location, character, or ownership of a historic property if the applicable Lead Federal Agency determines that disclosure may 1) cause a significant invasion of privacy and 2) risk harm to the historic property. All actions stipulated in the PA, where necessary, will be consistent with the requirements of Section 304 of the NHPA.

XVIII. DURATION OF AGREEMENT

This PA will remain in effect for five (5) years after the date it takes effect. Ninety days prior to the conclusion of the five-year period, PRHTA will notify all signatories in writing. The PA may be extended for an additional term, the length of which will be agreed to by the signatories. The extension will be codified through an amendment of the PA in accordance with Stipulation XV. If any of the signatories objects to extending the PA, or proposes amendments, PRHTA will consult with the signatories to consider amendments or other actions to avoid termination.

Execution of this Agreement by the FHWA, PRHTA, SHPO, USACE and ACHP and implementation of its terms are evidence that FHWA has considered the effects of Program-funded undertakings on historic properties and afforded the ACHP an opportunity to comment. Execution of this Agreement and implementation of its terms are also evidence that USACE has considered the effects of issuing permits issued by USACE for non-Program-funded PRHTA transportation undertakings on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

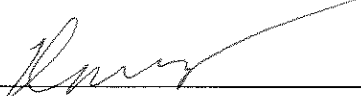
FEDERAL HIGHWAY ADMINISTRATION, PUERTO RICO DIVISION

By Jamie Christian

Title Division Administrator

Date 1/27/22

UNITED STATES ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

By  _____

Title Deputy Chief, Regulatory Division, Jacksonville District

Date January 27, 2022

PUERTO RICO STATE HISTORIC PRESERVATION OFFICER

By *Carly A. Rubio*

Title Puerto Rico State Historic Preservation Officer

Date January 27, 2022

ADVISORY COUNCIL ON HISTORIC PRESERVATION


By John E. Tanner

Title Vice chairman ACHP

Date 1/27/2022

INVITED SIGNATORIES

PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY

By 
Edwin E. Gonzalez Montalvo

Title Executive Director

Date Jan/27/2022

APPENDIX A SUPPLEMENTAL DEFINITIONS

1. Area of Potential Effects (APE) means the geographic area(s) within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR §800.16(d)). The APE must include all areas of direct, indirect, and reasonably foreseeable and cumulative effects including, but not limited to, staging areas, temporary construction easements, access roads, utility corridors, etc.
2. Consulting parties include, but are not limited to, the State Historic Preservation Officer; local governments; applicants for federal assistance, approval or funding; and individuals and organizations with a demonstrated interest in the undertaking due to the nature of their legal or economic relationship to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.
3. Cultural Resources are prehistoric and historic districts, sites, buildings, structures, and objects. Within the broad range of cultural resources are those that have recognized significance, which are called historic properties, as defined in 36 CFR §800.16(11).
4. Days, when referenced in this Agreement, refer to calendar days
5. Discovery plans lay out the process for how a late discovery, usually archaeological, is to be addressed on a project or projects. The plan includes the following elements: on-site responsibilities of contractor/construction personnel, notification of PRHTA of discovery, PRHTA responsibilities at time of discovery, including those of PRHTA's SOI qualified personnel, process for documentation of cultural resources, and actions to be completed in order for construction to proceed in area of discovery.
6. In-kind means that new materials used in repairs or replacements match the material being repaired or replaced in design, color, texture, other visual properties, and, where possible, materials. For more information, see The Secretary of the Interior's Standards for Rehabilitation, at <https://www.nps.gov/tps/standards/rehabilitation.htm>.
7. Previously Disturbed Soil refers to areas where previous construction, or other activities by human or natural agents, has physically altered soils within the three-dimensional APE to the point where there is no potential for an archaeologically significant property to remain.

8. Right-of-way (ROW) is the land utilized by PRHTA for the purposes of transportation, which contains traveled portions of a roadway and associated facilities, such as road shoulders, turnouts, and medians, as well as the adjacent land required for routine maintenance of the roadway and associated facilities. A road ROW may be owned by PRHTA, or it may be an easement that is granted by another landowner to PRHTA for the operation and maintenance of the roadway.
9. Roadway prism means the three-dimensional area of a roadway from the top of slope to the toe of slope that has been previously disturbed by roadway construction. This includes bridges, drainage culverts, walls, ditches, road surfaces, road shoulders, and road fills.
10. Screened Projects are Program-funded undertakings that PRHTA determines have the potential to affect historic properties that following evaluation by a qualified professional may be exempted from further review.
11. Undertakings that have no potential to cause effects on historic properties, pursuant to 36 CFR § 800.3(a)(1), are defined as those actions that by their nature, will not result in effects to historic properties. FHWA defines these actions as non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation and do not require any further obligations under Section 106. All construction-related actions with a federal nexus must comply with 36 CFR §§ 800.4 to 800.6. Questions about applicability of 36 CFR § 800.3(a)(1) should be referred to the FHWA Federal Preservation Officer (FPO).

APPENDIX B PROJECTS REQUIRING NO FURTHER SECTION 106 REVIEW

The projects listed below may be determined by PRHTA qualified staff or a PRHTA qualified consultant to be screened from further Section 106 review under this PA, if the conditions described under each project class are met. If these conditions are met, these projects will have minimal effects to historic properties, and will require no further Section 106 review.

As discussed in Stipulation V.B.3, if an undertaking occurs along, crosses or is adjacent to a National Register-listed or eligible historic road, or a historic road that has yet to be evaluated in terms of National Register eligibility, PRHTA's qualified professional will consult with SHPO on the applicability of this appendix for the undertaking. PRHTA's qualified professional will prepare a standard report that:

- Justifies the application of this appendix to the undertaking involving the historic road, and
- Documents that all the additional required conditions associated with the undertaking as listed in this appendix have been met.

PRHTA's qualified professional will submit the report to SHPO. If SHPO does not respond within 30 calendar days from receipt of the report, the PRHTA will assume SHPO has no objection to the use of this appendix for the undertaking, and the undertaking will require no further Section 106 review. If SHPO concurs with PRHTA's proposed use of this appendix for the undertaking, then the undertaking will require no further Section 106 review. If SHPO does not concur with the applicability of this appendix to the undertaking, the undertaking will be reviewed in accordance with Stipulation V.C through V.E.

1. CURB, GUTTER AND SIDEWALK IMPROVEMENTS

- In-kind improvements, or
- Limited to sidewalks, gutters and curbs that are not contributing elements to a National Register-listed or eligible property, or potential historic property.

2. GUARDRAIL INSTALLATION

- Limited to existing disturbed ROW, and
- Is not located within or adjacent to a historic property or potential historic property.

3. INSTALLATION OF TRAFFIC IMPACT ATTENUATOR

- Limited to existing disturbed ROW, and
- Is not located within or adjacent to a historic property or potential historic property.

4. IN-KIND REPAVING, PAVEMENT REHABILITATION, RESURFACING OR RECONSTRUCTION PROJECTS
 - Do not extend beyond existing roadway prism and/or is within existing disturbed ROW, and
 - Are not located within or adjacent to a historic property or potential historic property.
5. PAVEMENT MARKINGS
 - Within existing pavement surface.
6. MARKERS AND DELINEATORS INSTALLATION
 - Do not extend beyond existing roadway prism.
7. LIGHTING AND SIGNALIZATION INSTALLATION OR REPLACEMENT
 - In-kind improvements and/or occurring in areas of previous ground disturbance within ROW, and
 - Are not located within or adjacent to a historic property or potential historic property.
8. BRIDGE PRESERVATION, STABILIZATION, REHABILITATION, AND REPLACEMENT
 - Projects involving a bridge less than 45 years old, or
 - Projects involving a post-1945 concrete or steel bridge that is not on the list of bridges recognized as having some exceptional significance, pursuant to the ACHP Program Comment on Post-1945 Concrete and Steel Bridges (see Appendix C of this PA), and
 - Projects are not within or adjacent to a historic property or potential historic property.
9. OVERLAY AND SEALCOATS RESURFACING
 - Limited to existing disturbed ROW.
10. REPAVING AN EXISTING GRAVEL SHOULDER
 - Does not extend beyond existing roadway prism.
11. INTERSECTION IMPROVEMENT
 - Limited to existing ROW. Does not occur in a historic district and does not involve new vertical elements, or
 - Is limited to areas that have been previously inventoried to current standards for historic property identification, with negative results.
12. INSTALLATION OF NOISE BARRIERS
 - Limited to existing disturbed ROW, or
 - Are in adjacent locations of previously disturbed soils, or

- Are limited to areas that have been previously inventoried to current standards for historic property identification, with negative results, and
- Are not within or adjacent to a historic property or potential historic property.

13. REPAIR OR CONSTRUCTION OF RETAINING WALLS

- Limited to existing disturbed ROW, or
- Are in adjacent locations of previously disturbed soils, or
- Are limited to areas that have been previously inventoried to current standards for historic property identification, with negative results, and
- Are not within or adjacent to a historic property or potential historic property.

14. SCOUR MITIGATION

- Limited to existing disturbed ROW.

APPENDIX C

Bridge Program Comment Excepted Bridges List – Puerto Rico

Bridge Number	Name	Location	Bridge Type	Year Built	Brief Description of Significance
643	PR 106 over Yaguez River	Mayagüez	Concrete continuous tee beam	1952	Balboa bridge builder is Arturo Diaz Jr. Esthetic value in railings and piers.
1309	PR 3 over Canovanas River	Canovanas	Concrete continuous tee beam	1956	Beams and pillars have distinctive architectural characteristics.
1518	PR 171 over El Cabro Creek	Cidra	Concrete slab	1950	Significant for design and workmanship.
1860	Local Road over Piñonas River	Barranquitas	Steel culvert	1986	Arc concrete bridge culvert, probably the only one of that type.
1717	PR 25 & parking over PR22 (Minillas Tunnel)	San Juan	Concrete box beam or girder-simple	1980	Minillas Tunnel is the first and the only of its kind. Is associated with the route development that connect San Juan, Santurce and Catano.
2042	PR 52 southbound over depression	Cayey	Steel continuous frame	1974	The type is one of two only in Puerto Rico.
2043	PR 52 northbound over depression	Cayey	Steel frame	1974	The second of this type constructed in the island.

ATTACHMENT A

The following is a list of standard forms and report formats to be used in carrying out this PA. As stipulated throughout the PA, these standard forms and report formats are to be developed by PRHTA in consultation with SHPO. The forms will be complete within 6 to 12 months of the effective date of the PA. Forms 1-4 will be complete in 6 months, and forms 5 and 6 within one year.

1. Form for Screened Undertakings Exempted from Further Review
2. Form for Consultation on Area of Potential Effects
3. Form for Finding of No Historic Properties Affected
4. Form for Finding of No Adverse Effect
5. Form for Notification of an Emergency Action
6. Standard Report Format for Consulting with SHPO on the Application of Appendix B to Undertakings Involving Historic Roads