

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE HERITAGE CONSERVATION AND RECREATION SERVICE CONCERNING EMERGENCY PROCEDURES APPLICABLE TO UNANTICIPATED CULTURAL RESOURCES DISCOVERED DURING CONSTRUCTION OF FEDERAL-AID HIGHWAYS

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), is authorized and directed by Congress to implement the Federal-aid highway program (Title 23, U.S.C.); and

WHEREAS, a delay to the project could unnecessarily disrupt a construction schedule and be costly; and

WHEREAS, representatives of the FHWA, the National Conference of State Historic Preservation Officers, the Heritage Conservation and Recreation Service (HCRS), and the Advisory Council on Historic Preservation (ACHP) have met to consider FHWA responsibilities when such emergency conditions exist; and

WHEREAS, these parties agree that a special procedure is necessary and appropriate to allow expeditious consideration of such resources and meet the requirements of 36 CFR, Part 800.7;

THEREFORE, it is mutually agreed that the stipulations in this Memorandum of Understanding provide an expeditious alternate method for consideration of cultural resources which are discovered after construction has started.

STIPULATIONS

- I. When a Federal-aid highway construction project uncovers a cultural resource that may be eligible for the National Register, the expeditious process detailed in Stipulation II may be adopted if the following has been accomplished:
 - A. A cultural resource survey performed according to the requirements of 36 CFR, Part 800.4(a), was completed prior to project approval and the discovered resource was not identified during such survey.
 - B. The process detailed in the ACHP regulations (36 CFR, Part 800) was completed prior to the start of construction.
 - C. The construction contract directs the contractor to be on the lookout for cultural resources and to avoid damage to such discovered resources until the provisions of Stipulation II are complied with.

- II. Whenever anything that might be a cultural resource is discovered during construction, work will avoid the area of the discovery and the contractor shall notify the State highway agency (SHA) immediately. If warranted, the SHA will contact and inform the State Historic Preservation Officer (SHPO) and FHWA of the discovery and arrange an onsite meeting of appropriate parties if either FHWA or the SHPO believes it necessary. If it is determined that a meeting will be held, the following actions will be taken:
 - A. The FHWA will notify the HCRS, Division of Interagency Archeological Services (IAS), Department of the Interior (DOI), by telephone with followup written notification that it appears that significant archeological or historical data contained in a cultural resource have been uncovered on a particular project.
 - B. Within 48 hours of telephone notification, HCRS will send an authorized representative of the Secretary of the Interior (DOI representative) to examine the discovery.
 - C. Following examination and consultation with the SHPO, SHA, FHWA, and any local authorities deemed appropriate, one of the following recommendations will be made at the onsite meeting by

