PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE UTAH DEPARTMENT OF TRANSPORTATION THE PAIUTE INDIAN TRIBE OF UTAH And THE INDIAN PEAKS BAND OF PAIUTE INDIANS REGARDING COORDINATION AND CONSULTATION ON FEDERAL-AID HIGHWAY PROJECTS IN UTAH IN ACCORDANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT SECTION 106 PROCESS AND 36 CFR PART 800

WHEREAS, the Federal Government has a unique relationship with Indian tribes derived from the Constitution of the United States, treaties, Supreme Court doctrine, and Federal statutes whereby Indian tribes are recognized as sovereign nations. The Federal Highway Administration (FHWA), as a Federal agency, recognizes the government-to-government relationship between the United States and federally recognized Indian tribes and acknowledges the Indian Peaks Band of Paiute Indians of Utah as a sovereign nation with inherent powers of self-governance; and

WHEREAS, the FHWA is the agency of the United States Government that has the responsibility for administering the Federal-aid highway program in Utah and agrees to coordinate under a government-to-government relationship with Federally recognized tribal governments in compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS the Indian Peaks Band of Paiute Indians (Band) is a sovereign government having an interest in the preservation and protection of its treaty rights and cultural heritage both within the boundaries of the Indian Peaks Band Reservation and within the lands claimed and occupied by the Band at the time described in the Executive Order No. 2229, which reserved public domain land in Beaver County, Utah and signed into law on August 2, 1915 by President Woodrow Wilson. Indian Peaks Band is one out of five bands which makes up the Paiute Indian Tribe of Utah (Tribe) as shown in Attachment 1, and the Indian Peaks Band Council is the governing body for the Band and has the authority to participate in this Programmatic Agreement (PA); and

WHEREAS, the FHWA has requested the Utah Department of Transportation (UDOT), the primary recipient of Federal-aid highway funds in the State of Utah, to provide assistance to FHWA in complying with the body of environmental law that includes the National Environmental Policy Act (NEPA), the NHPA, and other similar laws; and

WHEREAS, the Band has requested the Tribe to provide assistance to the Band in complying with the body of environmental law that includes the National Environmental Policy Act (NEPA), the NHPA, and other similar laws in its absence; and

WHEREAS, the FHWA has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places that may be of interest to the Band and through this PA has consulted with the Tribe and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.14 of the regulations implementing Section 106 of the NHPA; and

WHEREAS, the provisions of the NHPA regulations in 36 CFR 800.2(c)(2)(E) encourage Federal agencies to enter into agreements with Indian Tribes or Bands that specify how they will carry out their responsibilities in the Section 106 process; and

WHEREAS, respectful of each other's legitimate values and goals, FHWA, the Band, the Tribe, and UDOT agree to establish and maintain a relationship based on open dialog, mutual respect, and early coordination. The overall purpose of this PA is to create a consultation process that allows the opportunity for tribal input on actions by the FHWA and UDOT and to cooperatively work together to implement the NHPA and address other issues of mutual concern. The goal of this dialog is to allow FHWA and UDOT to use this input to identify impacts to the social, cultural, natural, and economic environments and seek opportunities to avoid and minimize those impacts, or to preserve or enhance the resource when possible prior to undertaking an action; and

WHEREAS, the representatives of the FHWA have engaged in consultation with representatives of the Band, and have jointly agreed to establish a consultation process in a PA; and

WHEREAS, the UDOT has participated in the consultation and has been invited to sign this PA; and

WHEREAS, nothing in this PA shall alter, amend, repeal, interpret, or waive tribal sovereignty, tribal sovereign immunity, any treaty rights, or other such rights of the Band, or to preempt, modify, or limit the exercise of any such rights; and

NOW, THEREFORE, the FHWA, the Band, the Tribe and the UDOT hereby agree to the following consultation process for Federal-aid highway transportation projects in the State of Utah in compliance with Section 106 of NHPA.

Stipulations

All parties to this PA agree to ensure that the following measures are carried out:

1. Applicability

a. The UDOT shall implement the provisions set forth in this PA for any Federal-aid transportation project located within the geographic area of interest delineated in

Attachment 2 by the Band. In doing so, the FHWA, with the assistance of the UDOT, will meet its responsibilities with regard to consultation with the Band under Section 106 of the NHPA.

b. The UDOT is authorized by the FHWA to initiate consultation with the Band pursuant to 36 CFR 800.2(c)(4) and the Statewide PA among the FHWA, UDOT, Utah SHPO, and the Council (Attachment 3), but the FHWA remains legally responsible for all findings and determinations charged to the agency official and this authorization is not intended to reduce the FHWA's government-to-government consultation responsibilities.

c. This PA sets forth all aspects of Band participation in the Section 106 process and is intended to facilitate the direct participation of the parties in all phases of an undertaking that has the potential to affect historic properties and cultural resources protected by treaty and applicable statutes. A request for Band participation shall be initiated at the earliest stage possible and shall continue from the planning stage, through scoping, design, construction, operation, and into maintenance, as appropriate, based on the context and the intensity of the undertaking and possible impacts of the undertaking to historic properties and cultural resources of concern to the Band.

2. Designation of point of contact and their responsibilities

a. The individual designated as the primary point of contact for each party to the PA shall serve as the official representative responsible for responding to requests and issuing decisions under the provisions of this PA. Any party to this PA may identify others they wish to be included as secondary contacts. Secondary contacts shall be provided copies of transmitted information but are not responsible for responding to requests and making decisions *unless the primary point of contact is unavailable.*

b. The role of the primary point of contact is to develop a relationship with other points of contact with the goal of a clearer understanding of the needs and concerns of all parties and to respect cultural resources. These individuals should strive to develop relationships that will result in more effective cultural resources management and improve the effectiveness and efficiency of the consultation process.

c. Identification of the points of contact (Attachment 4):

1. The FHWA's Contact:
   The FHWA Tribal Coordinator is the primary point of contact for FHWA. The Division Administrator and the Environmental Program Manager are secondary contacts for FHWA.

2. The Band's Contact:
   The Band Chairperson is the primary point of contact for the Band. The Tribe's Cultural Resource Coordinator and the Tribe's Chairperson of the Paiute Indian Tribe of Utah are secondary contacts for the Band.

3. The UDOT's Contact:
   The UDOT primary point of contact shall depend upon the location of the undertaking according to regions defined by UDOT. Within each region, the primary point of contact shall be the Region NEPA/NHPA Specialist except for Region 4 where primary point of contact is recognized by Districts. The Cultural Resource Program Manager is a secondary contact for UDOT.

d. Change in contacts and addresses for contacts

   1. Any party to this PA may change its point of contact person for purposes of this PA by communicating to the other parties in writing within 30 days of the effective date of that change. Such changes do not require this PA to be amended.

   2. Addresses and other contact information for the contacts are found in Attachment 4 to this PA. It is the responsibility of each of the parties to update any changes in that contact information based on information provided pursuant to Stipulation 2.d.1..

3. **Procedures for notifications to the Band**

a. The UDOT will contact the Band in order to provide information about undertakings and to solicit comments regarding how an undertaking may affect properties of traditional religious and cultural significance to the Band. The UDOT is authorized to consult with the Band on any matter pertaining to this PA. The FHWA remains responsible for complying with all Federal requirements, including government-to-government consultation with the Band. Therefore, the FHWA shall honor any request by the Band for government-to-government consultation notwithstanding any provisions of this PA.

b. The UDOT shall contact the Band for proposed transportation projects located in the geographic area identified by the Band as areas of concern for cultural resources, depicted on the map in *Attachment 2*, subject to the exclusions in Stipulation 3(c).

c. Certain projects are exempted from review and information about them will not be provided by the UDOT. The types of projects listed in Attachment 5 are unlikely to affect cultural resources, and by agreement of the parties to this PA are exempted from the Section 106 Tribal Consultation process unless specific

information about a risk of affecting cultural resources is presented. This exemption is intended to streamline the consultation process.

d. The UDOT shall provide initial information about an undertaking by using a *Project Initial Tribal Notification Form* (Attachment 6) in its initial contact with the Band. The *Project Initial Tribal Notification Form* will minimally contain the following information: the project name, a map of the project area, the project type, the potential for archaeological sites in the project area, and a request to the Band to respond with concerns. This information will be transmitted via email, and U.S. mail to the Band's primary point of contact and the Tribe's Cultural Resources Coordinator.

e. The UDOT shall utilize the *Project Information Form* (Attachment 7) for transmitting information to the Band and Tribe on the identification and evaluation of historic properties and resolution of adverse effects. The UDOT shall provide information about inventories of cultural resources for undertakings as soon as they become available. The UDOT may also ask to discuss this information with the Band, including whether further involvement by the Band is desired.

f. The UDOT shall notify the Band by email or phone of unanticipated discoveries for projects in construction, in accordance with the provisions in Stipulation 5.

g. The UDOT shall transmit notifications and information not otherwise addressed in this section of this PA to the Band via telephone, fax, email, or U.S. mail. For telephone transmittals a record will be kept by the UDOT and the Band of all phone conversations.

h. The FHWA and UDOT understand that some information about cultural resources or traditional knowledge or practices is sensitive. The FHWA and UDOT shall, at the request of the Band, treat certain matters of concern to the Band as sensitive. This may result in such matters not being transcribed or written records of such matters protected from public disclosure based on applicable laws (Section 304 of NHPA and Section 9(a) of the Archaeological Resources Protection Act (ARPA)).

i. The FHWA and UDOT may request to meet with the Band on any matter covered by this PA or regarding performance of this PA.

4. **Procedures for responses from the Band**

a. The Band understands that in order to best have its issues addressed, any questions or concerns it has needs to be transmitted to the UDOT as early as possible, ideally when a project is still in its initial planning stages. Certain requests for information from the Band primary point of contact may require the

Band to consider the matter internally. For these and other matters, the Band commits to sharing information, questions, and concerns with the UDOT, as needed, even though the Band may still be deliberating on such matters.

b. The Band shall respond after it has received either a *Project Initial Tribal Notification Form* or a *Project Information Form*. The Band will complete the *Tribal Response* sections on the forms as completely as possible and make a good-faith effort to respond within 30 calendar days of receipt. If the Band's response does not arrive at UDOT within 30 calendar days of the Band's receipt of a request for review and comment, UDOT may proceed to the next step in the consultation process. If the Band does not respond to a request for comment it will not prevent the Band from providing a response at a later point. If the Band responds with concerns on matters after the 30 day period and FHWA and UDOT have made decisions based on that lack of response, FHWA and UDOT are not required to reconsider those matters. However, UDOT will make a reasonable attempt to incorporate any information or comments received after 30 days, as the project allows.

c. The Band's response may be transmitted by telephone, fax, email, or US mail. For telephone transmittals a record will be kept by the Band of all phone conversations.

d. Part of the Band's response may be a request for a face-to-face meeting in order to facilitate the transmittal of information or concerns. The FHWA and UDOT shall make a reasonable and good faith effort to accommodate such requests. If a face-to-face meeting cannot be reasonably accommodated, the FHWA and UDOT will offer an alternative.

e. The Band may request to meet with the FHWA and/or UDOT on any matter covered by this PA or regarding performance of this PA.

5. Unanticipated Discovery

a. In the event of an unanticipated discovery of a Native American archeological site after award of a construction contract on a project in the Band's geographic area of concern, the UDOT shall notify the Band by telephone and/or email within 24 hours of the discovery. The UDOT shall invite the Band to visit the site and shall protect and secure the discovery location to the fullest extent possible. The UDOT shall notify the Band of its determination of the need (or not) for further investigations. The Band shall respond to an invitation for a visit within 24 hours of receipt of notice of the discovery.

b. If investigations of the discovery are determined to be warranted, the UDOT shall transmit to the Band a draft of the plan of those investigations. The Band shall

have one full business day to reply. The UDOT shall consider any concerns contained in the Band's response to the fullest extent possible.

c. If the Band objects to any matter related to the discovery, the UDOT shall provide the FHWA a copy of the documentation including the basis for the Band's objection, along with copies of the results of consultation with all consulting parties. The FHWA shall review this documentation and notify all parties of its decision.

6. Native American Remains

a. In the event Native American burials that may be culturally affiliated with the Band are anticipated or discovered during archaeological excavation or during construction of the project, they shall be treated pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*) and the Utah Native American Graves Protection and Repatriation Act of 1992 (U.C.A. 9-9-401 *et seq.*, and its implementing Rule R230-1).

b. During the excavation of any Native American human remains, the UDOT shall take the following measures: ensure that they are treated respectfully and with dignity at all times; provide security for the site to prevent vandalism; and no photographs will be taken of human remains or open graves other than photo-documentation needed for recordation of the excavation;

c. The UDOT shall provide an opportunity for the culturally affiliated Band to visit the site and provide comments during archaeological excavation and for the Band to perform appropriate ceremonies.

7. Dispute Resolution

a. Should any party to this PA object in writing to FHWA regarding any action carried out or proposed with respect to a particular undertaking or implementation of this PA, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall consult with all parties (unless the information is identified as confidential to the Band). After consultation with the other parties, the FHWA shall make a decision and forward all documentation to all parties. If the objection is relative to Section 106 consultation, the FHWA shall forward all documentation relevant to the objection to the Council pursuant to 36 CFR 800.6(b), including the FHWA's proposed response to the objection.

b. The FHWA's responsibility to carry out all actions under this PA that are not the subject of the objection shall remain unchanged.

8. Monitoring Implementation of this Agreement

a. The FHWA may review activities carried out pursuant to this PA. The UDOT shall facilitate this review by compiling information to document the effectiveness of the PA and by making the information available on an annual basis to the FHWA and the Band in the form of a written report. Categories of information will include, but are not limited to, a list of projects for which consultation was carried out and the extent of Tribal involvement, projects that were exempted from review, and resolution of Tribal concerns.

b. The UDOT shall, by November 30th of each year, prepare and submit the written report to the FHWA and the Band covering the previous year from October 1 to September 30th. The initial report shall be submitted by November 30, 2009, covering the effective date of this PA until September 30, 2009.

c. The FHWA shall monitor the consultation process outlined in this PA at its discretion, including conducting process reviews from time to time.

d. The FHWA shall notify the Band and the UDOT of any meetings to be held for the express purpose of monitoring compliance with the provisions of this PA by providing a thirty-day notice.

9. Amendment and Termination

a. Any party to this PA may request that it be amended at any time, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such proposed amendment.

b. Any party to this PA may terminate it by providing thirty days written notice to FHWA, provided that the parties will consult during the period before termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA shall comply with 36 CFR Part 800 with regard to individual undertakings, otherwise covered by this PA.

10. Duration

The conditions of this PA shall be in place, including any amendments thereto until terminated.

Execution of this PA by the FHWA, the Paiute Indian Tribe of Utah, the Indian Peaks Band of Paiute Indians and the UDOT, and the implementation of its terms, documents the efforts of FHWA to consult with the Band under Federal law and regulations. The

Band and the Tribe recognizes the actions of UDOT in assisting FHWA in carrying out its responsibilities under Section 106 of the NHPA.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 9/29/08
Walter C. Waidelich, Jr., Division Administrator

INDIAN PEAKS BAND OF PAIUTE INDIANS

By: _____ Date: 9/29/08
Jeanine Borchardt, Band Chairwoman

INVITED SIGNATORY

THE PAIUTE INDIAN TRIBE OF UTAH

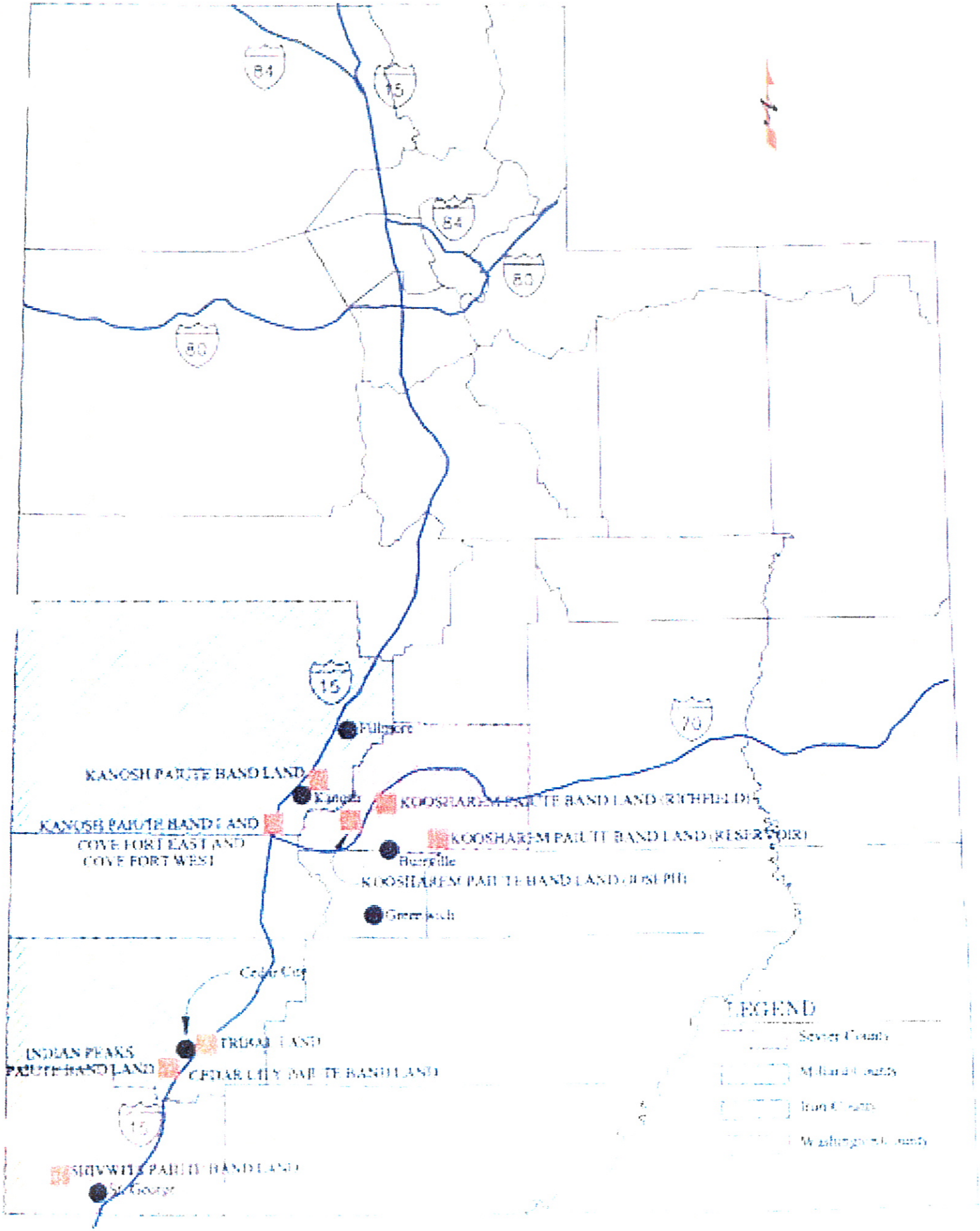
By: _____ Date: 9/29/08
Lora Tom, Tribal Chairwoman

UTAH DEPARTMENT OF TRANSPORTATION

By: _____ Date: 9-29-08
John Njord, Executive Director

ATTACHMENT 1

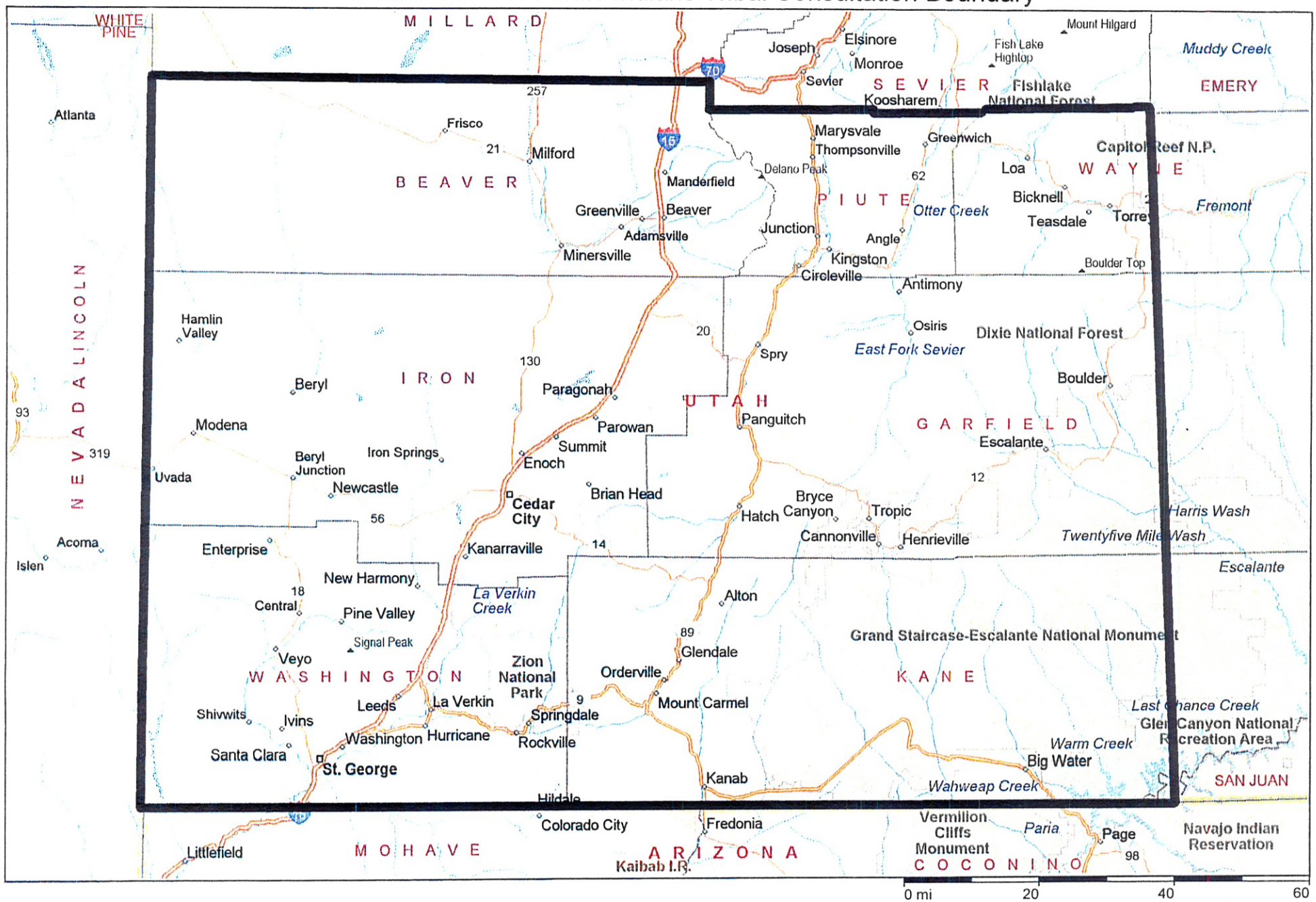
PAIUTE INDIANS OF UTAH RESERVATION AREAS


84
15
84
80
80
15
70
Fillmore
KANOSH PAIUTE BAND LAND
Kanosh
KOOSHAREM PAIUTE BAND LAND (RICHFIELD)
KANOSH PAIUTE BAND LAND
COVE FORT EAST AND
COVE FORT WEST
KOOSHAREM PAIUTE BAND LAND (RESERVOIR)
Burnville
KOOSHAREM PAIUTE BAND LAND (JOSEPH)
Greenwich
Cedar City
TRIBAL LAND
INDIAN PEAKS
PAIUTE BAND LAND
CEDAR CITY PAIUTE BAND LAND
15
SHIVWITS PAIUTE BAND LAND
St. George
LEGEND
Sevier County
Millard County
Iron County
Washington County

ATTACHMENT 2

GEOGRAPHIC AREA OF INTEREST FOR TRIBAL CONSULTATION

Indian Peaks Band of Paiute Indians Tribal Consultation Boundary



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ATTACHMENT 3

STATEWIDE PROGRAMMATIC AGREEMENT

PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE UTAH DEPARTMENT OF TRANSPORTATION, THE UTAH STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

SECTION 106 IMPLEMENTATION FOR FEDERAL-AID TRANSPORTATION PROJECTS IN THE STATE OF UTAH

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

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

WHEREAS, UDOT administers Federal-aid projects throughout the State of Utah as authorized by Title 23 U.S.C. 302 and Sections 72-1-201 and 72-2-111 of the Utah Code; and

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

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

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

WHEREAS, FHWA has notified the public, Federal and State agencies, Certified Local Governments (CLGs), and Federally recognized Indian tribes (Tribes) with ancestral lands in Utah about this Agreement, has requested their comments, and has taken any comments received into account. These Tribes include the Confederate Tribes of Goshute Reservations, Fort Washakie Arapaho, Hopi, Fort Washakie Shoshone, Navajo Nation, Northwestern Band of Shoshone Nation, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Skull Valley Band of Goshute Indians, Ute Indian Tribe, Ute Mountain Ute Tribe, White Mesa Ute Tribe; and

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

WHEREAS, this Agreement shall supercede the previous letter agreement between the FHWA, SHPO, and UDOT (June 6, 1990; Delegation of Section 106 Responsibility)

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

STIPULATIONS

The FHWA, with the assistance of UDOT, shall ensure that the following measures are carried out. To aid the signatories of this PA, the stipulations are organized in the following order:

I. Applicability and Scope
II. Definitions
III. Professional Qualifications Standards
IV. Responsibilities
V. Consultation with Tribes
VI. Participation of Other Consulting Parties and the Public
VII. CE Delegation
VIII. Project Review
IX. The Section 106 Process
X. Emergency Situations
XI. Post-Review Discoveries
XII. Treatment of Human Remains
XIII. Administrative Stipulations

I. APPLICABILITY AND SCOPE

A. This Agreement sets forth the process by which the FHWA, with the assistance of UDOT, will meet its responsibilities pursuant to Section 106 and 110 of the NHPA (16 U.S.C. 470f and 470h-2).

B. The objective of this Agreement is to make more efficient the methods by which FHWA and UDOT review individual undertakings processed under Section 106 that may affect historic properties and to establish the process by which FHWA (who retains ultimate Section 106 responsibility, except where such responsibility has been delegated to UDOT in accordance with the MOU in Attachment 1), the Council, the SHPO, and interested parties will be involved in any such review.

C. Through this PA, FHWA authorizes UDOT to initiate and, in most cases, conclude consultation with the SHPO and other consulting parties for purposes of compliance with Section 106 of the NHPA.

D. Should UDOT assume responsibility for projects classified as Categorical Exclusions, pursuant to 23 U.S.C 326 and a Memorandum of Understanding between FHWA and UDOT (Attachment 1), UDOT shall assume the responsibilities of FHWA and shall satisfy the provisions of Section 106 of the NHPA and 36 CFR 800 by complying with the stipulations of this Agreement.

E. Through this PA, FHWA and UDOT establish two tiers of project review, dependent upon the type of impacts to historic properties.
   1. Tier 1 Project Review: Tier 1 projects have the potential to affect historic properties, but following screening specified in Attachment 4, may be determined to require no case-by-case review or consultation with the SHPO because they result in a finding of no historic properties affected. Tier 1 undertakings must meet the criteria outlined in Stipulation VIII.A.4.
   2. Tier 2 Project Review: Tier 2 projects result in a finding of no adverse effect or adverse effect.

F. The FHWA retains the responsibility to consult with Tribes as required under 36 CFR 800, as amended. UDOT may assist FHWA if individual Tribes agree to alternate procedures.

G. This Agreement shall not apply to undertakings that occur on or affect tribal lands as they are defined in 36 CFR 800.16(x). Tribal lands are all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities. For such undertakings, FHWA shall follow the procedures in 36 CFR Part 800.

H. This Agreement does not supercede existing agreements currently in use in Utah by the FHWA, SHPO, Council, and UDOT, except for the June 6, 1990 delegation letter (referenced above). These existing agreements remain in force and are separate from this Agreement. A list of these agreements is attached hereto as Attachment 2.

I. Cooperating Federal Agencies who recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and UDOT follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and UDOT.

II. DEFINITIONS

A. For purposes of this Agreement, the definitions provided in 36 CFR 800.16 (a) through (z) inclusive shall apply whenever applicable.

B. There are three classes of action defined in the Council on Environmental Quality regulations (40 CFR 1500) that implement the National Environmental Policy Act (NEPA): Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).

C. SAFETEA-LU = Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59).

III. PROFESSIONAL QUALIFICATIONS STANDARDS

All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meets the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739) and who has been permitted (for archaeology only) by the state of Utah in accordance with U.C.A. 9-8-305 and its implementing rules, and who meets permit requirements of other agencies as appropriate. However, nothing in this stipulation may be interpreted to preclude FHWA or UDOT or any agent or contractor thereof from using the services of persons who do not meet these qualifications standards, providing their activities are conducted under the direct supervision of a person who does meet the standards.

UDOT shall employ personnel trained, experienced, and qualified in the fields of archaeology, history, and architectural history (as defined in 36 CFR 61, Appendix A). They are designated professionally qualified staff (PQS). Except on such occasions when the FHWA elects to consult directly with the SHPO or the Council, all consultation with the SHPO under this Agreement, and decisions made under Tier I, shall be performed by UDOT PQS. All consultation on behalf of UDOT and the FHWA shall be performed by the UDOT PQS.

IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA and of UDOT in complying with the terms of this Agreement. These responsibilities are listed in more detail in Attachment 3.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR 800.2(a) and 800.2(c)(4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by UDOT under the authority of FHWA, except where such responsibility has been delegated to UDOT in accordance with an MOU in Attachment 1. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m). FHWA may ask UDOT to assist in consultation if the individual Tribes agree to alternate procedures.

B. UDOT Responsibilities

Under the authority of FHWA, UDOT may carry out the following steps with respect to undertakings covered by this Agreement. Each PQS shall be responsible for ensuring that the following activities are carried out (Attachment 3). This list is not inclusive of all responsibilities of UDOT under this Agreement.

1. Determine whether the proposed federal action is an undertaking as defined in 36 CFR 800.16(y).
2. Determine under 36 CFR 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties
3. Determine under 36 CFR 800.3(c) and (d) whether the undertaking may occur on or has the potential to affect historic properties on tribal lands as they are defined in 36 CFR 800.16(x).
4. Solicit public comment and involvement, in accordance with 36 CFR 800.3(e) and UDOT's public involvement procedures.
5. Except as identified in Stipulation V, identify additional consulting parties, including Tribes, as described in 36 CFR 800.3, and invite them to participate in the undertakings covered by this Agreement.
6. Determine and document the scope of identification efforts and level of effort, as described in 36 CFR 800.4 (a) and (b), including the undertaking's area of potential effects (APE). SHPO consultation on the APE will not be required on routine projects (defined as those projects classified as a CE). For undertakings that are non-routine or those with the potential for substantial indirect and/or cumulative effects, SHPO shall be consulted.
7. Determine boundaries for historic properties.
8. Determine the eligibility of properties within the APE for listing on the NRHP.

9. Determine whether historic properties may be affected by the undertaking. Assess effects by applying the criteria of adverse effects as described in 36 CFR 800.5(a)(1)
10. In consultation with FHWA, the SHPO, and the Council (if it has chosen to participate), resolve adverse effects through the development, circulation, and execution of a Memorandum of Agreement (MOA), if appropriate.
11. Ensure conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, UDOT's Guidelines for Archaeological Survey and Testing (2000) and any successors to those guidelines, and applicable guidelines and procedures of land-managing agencies whose lands may be affected by the undertaking.
12. The UDOT PQS shall submit to the Utah Division of State History (UDSH) copies of all fieldwork reports, Intermountain Antiquities Computer Site Forms (IMACS), Reconnaissance Level Survey (RLS) forms, Intensive Level Survey (ILS) forms, and any other relevant documents.
13. Ensure curation of archaeological materials produced under this PA at a facility meeting the standards of 36 CFR 79 and U.C.A. 53B-17-603, as appropriate.

V. CONSULTATION WITH TRIBES

A. FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes. Notwithstanding any other provision of this stipulation, FHWA shall honor the request of any Tribe for government-to-government consultation regarding an undertaking covered by this Agreement.
B. In accordance with 36 CFR 800.3(f)(2), any Tribes that might attach religious and cultural significance to historic properties in the area of potential effects shall be identified by UDOT and invited by FHWA to be consulting parties.
C. UDOT shall ensure that consultation with Tribes is initiated early in the project planning process to identify cultural, confidentiality, or other concerns and to allow adequate time for consideration.
D. UDOT shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
E. FHWA may ask UDOT to assist in consultation if the individual Tribes agree to alternate procedures.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. **Consulting Parties**

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

B. **Public Involvement**

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and UDOT's environmental compliance procedures. UDOT's Public Involvement Handbook will provide guidance for identifying, informing, and involving the public. FHWA's Technical Advisory (T6640.8A, October 30, 1987) and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR 800.2(d), 800.3(e), and 800.11(c)(1 and 3).
2. The UDOT shall continue, through opportunities afforded by the current UDOT Public Involvement Procedures, to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., certain activities classified as Categorical Exclusions), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. The UDOT shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. CE DELEGATION

A. Should UDOT, under Section 6004 of SAFETEA-LU, assume full responsibility, authority, and liability for projects classified as Categorical Exclusions pursuant to an MOU (to be inserted as Attachment 1 to this Programmatic Agreement), UDOT shall be deemed to be a Federal agency for those undertakings.

B. UDOT shall satisfy the provisions of Section 106 of the NHPA and 36 CFR 800 by complying with the stipulations of this Agreement.

C. FHWA shall retain responsibility for government-to-government consultation with Tribes as defined in 36 CFR 800.16(m).

   a. If UDOT resolves any project-specific Tribal issues or concerns, the FHWA's role in the environmental process shall be limited to carrying out the government-to-government consultation process.

   b. If FHWA determines through consultation with a Tribe, or a Tribe indicates to FHWA, that the proposed resolution of Tribal issues or concerns by UDOT is not adequate and requires government-to-government consultation to resolve, the FHWA shall reassume responsibility for Section 106 for that project while continuing to comply with the stipulations of this Agreement.

D. FHWA may monitor UDOT's processing of any project. If the FHWA has reason to believe that UDOT's performance does not satisfy the terms and conditions of the MOU in Attachment 1, it may intervene to identify the problem. If the problem cannot be resolved to the satisfaction of FHWA, FHWA may reassume responsibility for Section 106 for that project, according to the provisions of the MOU in Attachment 1.

E. Although FHWA will not normally be involved in these undertakings, FHWA must monitor and assess quality assurance of the assignment of Section 106 responsibilities. In furtherance of those obligations, FHWA may elect to attend meetings between UDOT and another agency, and may submit comments to UDOT and the other agency, if FHWA determines that an issue between UDOT and the other agency has broad or unique policy implications for the administration of the state or national program.

F. The parties to the Programmatic Agreement, and affected tribes, will be notified once the MOU has been signed.

VIII. PROJECT REVIEW

A. Tier 1 Project Review

1. Tier 1 undertakings are those undertakings that have the potential to affect historic properties, but following appropriate screening, may be determined to require no further review or consultation under this Agreement. FHWA retains ultimate authority, responsibility, and liability, unless the project is processed under Stipulation VII. Pursuant to consultation with the other signatories to this Agreement, FHWA has identified undertakings that meet certain criteria and that will be addressed in accordance with Attachment 4 to this Agreement. The undertakings classified in this attachment as Tier 1 undertakings do not require case-by-case review by SHPO, but may be reviewed by the SHPO in a quarterly report under this Agreement when the steps set forth in the Attachment have been satisfactorily completed and when UDOT determines that no condition of the undertaking necessitates further review pursuant to this Agreement.
2. The PQS is responsible for screening undertakings to determine if those individual undertakings require further consideration, or if they may be determined not to require further review or consultation under the terms of this Agreement. The UDOT PQS may consult at any time, either formally or informally, with the SHPO on any undertaking.
3. The PQS shall include the identification of mandatory storage, disposal, or borrow areas and construction easements, prior to the screening process. If additional project areas are added to a screened undertaking, the undertaking must be re-screened.
4. The criteria for determining if an undertaking requires no further review and consultation beyond the screening assessment and documentation of decision making by UDOT, are as follows:

   a. Has no known public controversy based on historic preservation issues; and

   b. Has one of the following effect findings:

      i. No Historic Properties Affected: no sites present, as determined by UDOT PQS; or

      ii. No Historic Properties Affected: no historic properties (i.e., eligible for the National Register) present, as determined by UDOT PQS; or

      iii. No Historic Properties Affected: Historic properties are present, but are completely avoided by the undertaking and there is no or negligible potential for adverse indirect effects.
5. If a cultural resource inventory is conducted under this stipulation, any cultural resource reports generated from the survey shall be submitted to the UDSH for filing.
6. The UDOT Standard Specification 01355, Part 1.10, Inadvertent Discovery Of Historical, Archaeological, Or Paleontological Objects (Attachment 5), will be included in all environmental documents (CEs, EAs, EISs).
7. The requirements for reporting on the projects that qualify and are processed as Tier 1 undertakings will be in accordance with Attachment 4.
8. The PQS will ensure that the documentation in Attachment 4 is included in the appropriate NEPA document and project file.
9. UDOT administratively completes Section 106 activities, but FHWA retains authority, responsibility, and liability for all actions, findings, and determinations, unless the project is classified as a Categorical Exclusion pursuant to the MOU in Attachment 1.

B. Tier 2 Project Review

Tier 2 projects are all other projects not processed as Tier 1 projects (i.e., projects that result in a finding of no adverse effect or adverse effect). UDOT administratively completes Section 106 activities, but FHWA retains authority, responsibility, and liability for all actions, findings, and determinations, unless the project is classified as a Categorical Exclusion pursuant to the MOU in Attachment 1.

C. Quarterly Reports

1. On a quarterly basis (no later than December 1, March 1, June 1, and September 1), UDOT's Regional PQS shall submit to the Central PQS a list of all projects that were processed as screened undertakings (Tier 1) (Attachment 4) in that quarter. The Central PQS will compile a complete list of Tier 1 projects for submission to FHWA and the SHPO by the end of the quarter (December 31, March 31, June 30, and September 30).
2. This list shall include the county, project name and number, type of undertaking, level of effort, consultation measures, and a map showing the location of each project. In addition, all cultural resource reports, site forms, and other documentation for undertakings completed during the quarter, will be submitted to the UDSH.
3. This list will be provided to FHWA and the SHPO, who will review it for compliance with this Agreement, and if there are objections regarding the manner in which the terms of this Agreement are being carried out, will proceed in accordance with Stipulation XIII.C

IX. THE SECTION 106 PROCESS

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

A. Initiation of the Section 106 Process

1. Establish the undertaking, determine if the undertaking is a type of activity that does not have the potential to cause effects on historic properties, and determine if the undertaking will occur on Tribal lands;
2. If UDOT determines that the undertaking is one with "no potential to cause effects", UDOT will document this decision in the project record.
3. Develop planning to involve the public;
4. Identify the appropriate SHPO.
5. Identify consulting parties, including Tribes, as appropriate, during the early stages of Section 106 review. If UDOT wishes to consult with the SHPO on the identification of consulting parties, the SHPO shall have 15 days to respond or concur. If SHPO does not respond within that time period, UDOT may assume SHPO concurrence.
6. Begin consultation with consulting parties subject to limitations specified in Stipulation V.

B. Identification of Historic Properties

1. Pursuant to 36 CFR 800.4(a), UDOT shall determine the scope of identification efforts, including determining and documenting the undertaking's area of potential effects (APE), as defined at 36 CFR 800.16(d) and Attachment 6. If UDOT wishes to consult with SHPO on the scope of the identification efforts and the definition of the APE, the SHPO shall have 15 days to respond or concur. If SHPO does not respond within that time period, UDOT may assume SHPO concurrence.
2. Pursuant to 36 CFR 800.4(b), UDOT shall ensure the identification of historic properties that may be affected by an undertaking and gather information to evaluate the eligibility and integrity of these properties for listing in the National Register of Historic Places (NRHP).
3. Information shall be obtained through cultural resource surveys or other appropriate methods.

4. Identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), and should be consistent with SHPO guidance, FHWA guidance, UDOT Guidance, and any other guidance, methodologies, agreements, or protocols that FHWA, UDOT, and the SHPO agree should be used to identify properties, including those of other land-managing agencies.
5. If no historic properties are found to be present in the APE, the project will be processed as a Tier 1, in accordance with Stipulation VIII.A.

C. Evaluating Historic Significance

1. UDOT shall evaluate the historic significance of identified properties in accordance with 36 CFR 800.4(c), and shall make appropriate findings regarding eligibility. Where historic property boundaries have not previously been established, the PQS may identify recommended boundaries, following standards set forth in National Register Bulletin 21, Defining Boundaries for National Register Properties. UDOT shall consult with the SHPO on the outcome of identification and evaluation of historic resources.
2. For undertakings that have properties that are determined by the PQS to be not eligible for inclusion in the NRHP, the project will be processed as a Tier 1, in accordance with Stipulation VIII.A.
3. UDOT may simultaneously request SHPO concurrence on findings of inventory, eligibility, and effect covered by 36 CFR 800.3 through 800.6, provided other consulting parties and the public are afforded an adequate opportunity to express their views pursuant to 36 CFR 800.2(d).
   a. If the SHPO fails to comment on the multiple findings contained in a submission within 30 calendar days of receipt, UDOT may assume they have no objection and proceed to the next step in the consultation process pursuant to 36 CFR 800.3(c)(4).
4. Agreements regarding the NRHP eligibility of properties evaluated hereunder, and any disagreements pertaining thereto, shall be governed by 36 CFR 800.4(c)(2), except that in the event of a disagreement, UDOT shall first consult with the disagreeing party to resolve the disagreement.
   a. If the disagreement cannot be resolved through informal consultation, UDOT shall notify FHWA (unless the project is processed under Stipulation VII), whereupon UDOT, FHWA, the SHPO, and any consulting party shall consult to resolve the disagreement in accordance with a time frame specified by FHWA.
   b. If the disagreement is not resolved, FHWA (unless the project is processed under Stipulation VII) shall refer the issue to the Keeper of the National Register to obtain a determination of eligibility.

D. Finding of Effect

1. No Historic Properties Affected

   a. If UDOT finds that either there are no historic properties present or there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR 800.16(i), UDOT shall make a finding of "no historic properties affected" (36 CFR 800.4(d)(1).
   b. For projects processed as Tier 1 undertakings, the findings will be documented in the quarterly reports, and documentation submitted quarterly.
   c. UDOT shall notify all consulting parties, and make the documentation available for public inspection prior to approving the undertaking

2. **No Adverse Effect**
   a. UDOT shall make a formal finding of "no adverse effect" if none of the undertaking's anticipated effects meet the Criteria of Adverse Effect under 36 CFR 800.5(a)(1), or if UDOT imposes conditions that will avoid adverse effects to historic properties.
   b. UDOT shall submit its finding of effect (FOE) and supporting documentation to all consulting parties, including SHPO and Tribes, for comment.
   c. UDOT may consult at any time, either formally or informally, with the SHPO regarding application of the criteria.
   d. If the SHPO or another consulting party objects within 30 days of receipt of a UDOT finding of no adverse effect, UDOT will notify FHWA, unless the project is being processed under Stipulation VII. FHWA will either consult to resolve the objection or request the Council to review the finding pursuant to 36 CFR 800. 5(c)(2).
   e. If the project is processed under Stipulation VII, UDOT will either resolve the objection or will request the ACHP to review the finding pursuant to 36 CFR 800.5(c)(2).
   f. UDOT shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of 36 CFR 800.11(c).

3. **Adverse Effect**
   a. Where adverse effects, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), cannot be avoided, UDOT shall make a finding of "adverse effect".
   b. Prior to any finding of adverse effect, FHWA or UDOT shall consult with Tribes that ascribe traditional cultural and religious significance to affected historic properties, and may consult either formally or informally with SHPO regarding application of the criteria of adverse effect.

4. **Resolution of Adverse Effect**
   a. When a finding of adverse effect has been made by UDOT, the UDOT shall, in consultation with FHWA (unless the project is processed under Stipulation VII), the SHPO, and other consulting parties, evaluate alternatives or modifications to the project that would avoid, minimize, or mitigate adverse effects on historic properties. UDOT shall propose measures to resolve adverse effects, to be documented in a MOA.
   b. UDOT shall make information available to the public, including the documentation specified in 36 CFR 800. 11(e), subject to the confidentiality provisions of 36 CFR 800.11(c).
   c. UDOT shall provide an opportunity for members of the public to express their views on resolving adverse effects of the project through UDOT's Public Involvement Process.
   d. UDOT will also notify the public of the adverse effect by, at a minimum, publishing the notice in the two statewide newspapers (example in Attachment 7) and requesting comments.
   e. UDOT will notify the Council of the finding, pursuant to 36 CFR 800.6(a)(1), and that UDOT will be preparing a MOA to resolve adverse effects. UDOT will provide supporting documentation in accordance with 36 CFR 800.11(e), and determine Council participation pursuant to 36 CFR 800.6(a)(1).
      i. The Council shall advise the agency and the consulting parties whether it will participate within 15 days of receipt of notice.
   f. After consideration of the views of all consulting parties and the public, if UDOT, FHWA, the SHPO, and the Council (if it has chosen to participate [pursuant to 36 CFR 800 Appendix A]) agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement (MOA), pursuant to 36 CFR 800.6(c).

g. A copy of the MOA shall be provided to each signatory, invited signatory, and concurring signatory.
h. Once finalized, the measures to resolve adverse effects shall be incorporated into the undertaking, and the undertaking may be implemented.
i. If the UDOT determines that an undertaking may adversely affect a National Historic Landmark, UDOT will notify FHWA, who shall request the SHPO, the Council, and Secretary of the Interior, as well as any other consulting parties, to participate in consultation to resolve any adverse effects, pursuant to 36 CFR 800.10.

C. **Resolving Objections**

1. If FHWA, the SHPO, and UDOT are unable to agree on measures to resolve the adverse effects of an undertaking pursuant to this stipulation, they shall invite the Council to participate in the resolution process pursuant to 36 CFR 800.6(b)(2).
2. If the parties fail to agree to measures to resolve the adverse effects, FHWA, the SHPO, or the Council may terminate consultation pursuant to 36 CFR 800.7(a). Upon termination, the signatories shall comply with the remaining requirements of 36 CFR 800.7.

X. EMERGENCY SITUATIONS

A. For the purposes of this Agreement, emergencies are defined as occurrences that require emergency highway system/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/facilities; 3) protect remaining highway facilities; or 4) restore essential traffic.
   1. These repairs can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
   2. If the emergency repair project could affect historic properties, UDOT shall notify the SHPO, the FHWA, and Tribes within 24 hours. The SHPO and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have 72 hours to respond.
   3. For projects where the repair must be made within the first 30 days of the occurrence of the event that caused the emergency or the declaration of the emergency by an appropriate authority, the processing of environmental documentation will happen concurrently or after the fact. In these cases, UDOT will comply with the procedures in Stipulation IX of this Agreement to the extent possible, but the reviews will likely be conducted after the emergency work is completed.
   4. For projects taking longer than 30 days for repair, UDOT will comply with the procedures in Stipulation IX.
   5. Written notification of an emergency action shall be provided to the SHPO. The notice shall be clearly and prominently marked as an emergency notification, and shall include an explanation of how the action meets the requirements for emergency as defined herein. The notice shall also include a brief description of the eligibility and/or significance of the resource(s) involved, the nature, effect, and anticipated effect of the emergency action on the resource(s), and the anticipated time frame available for comment.

XI. POST-REVIEW DISCOVERIES

A. Planning for Subsequent Discoveries

When UDOT's identification efforts in accordance with Stipulation IX.B indicate that historic properties are likely to be discovered during implementation of an undertaking, UDOT shall include in any environmental document a plan for discovery of such properties. Implementation

of the plan as originally proposed, or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR 800.4-6.

B. Discoveries Without Prior Planning

1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after UDOT has completed its review under this Agreement, that portion of the project will stop immediately, in accordance with UDOT Standard Specification 01355, Part 1.10 (Attachment 5).
2. No further construction in the area of discovery will proceed until the requirements of 36 CFR 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.
3. UDOT will consult with SHPO and Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If neither the SHPO nor a Tribe files an objection within 72 hours to UDOT's plan for addressing the discovery, UDOT may carry out the requirements of 36 CFR 800.13 on behalf of FHWA, and the Council does not need to be notified.

XII. TREATMENT OF HUMAN REMAINS

A. Native American remains and any funerary objects, sacred objects, or objects of cultural patrimony (cultural objects) found within the APE shall be treated pursuant to the Utah Native American Graves Protection and Repatriation Act (NAGPRA) of 1992 (U.C.A. 9-9-401, *et seq.*, and its implementing Rule R230-1.

B. FHWA does not have any NAGPRA responsibilities because it neither owns lands in the State of Utah nor does it act as a museum as it is defined in NAGPRA. UDOT may be subject to NAGPRA if it acts as a museum, as defined in NAGPRA.

XIII. ADMINISTRATIVE STIPULATIONS

A. **Documentation**

1. All documentation that supports findings and determinations made under this Agreement shall be consistent with 36 CFR 800.11 and shall be in accordance with the UDOT Guidelines for Archaeological Survey and Testing, and its subsequent revisions or editions, with attachments to this Agreement, and with applicable guidelines and procedures of land-managing agencies that may be affected by the undertaking.
2. Documentation prepared by local agencies or their consultants in support of such findings shall be submitted to UDOT for review and approval by the UDOT PQS. UDOT shall transmit all documentation cited herein to the SHPO as stipulated by this Agreement. UDOT shall not transmit to FHWA or the SHPO any documentation that has not been reviewed and approved by the UDOT PQS.
3. All documentation prepared under this Agreement shall be kept on file at UDOT and made available to consulting parties and the public as stipulated by the Agreement, consistent with applicable confidentiality requirements [as described in 36 CFR 800.11(c)].
4. The UDOT PQS shall submit to the UDSH copies of all fieldwork reports, Intermountain Antiquities Computer Site Forms (IMACS), Reconnaissance Level Survey (RLS) forms Intensive Level Survey (ILS) forms, and any other relevant documents as soon as possible (and no later than 2 years) after completion of the work, unless an agreement between UDOT and UDSH states a different period.

5. For projects processed as Tier 1 projects, reports and forms will be submitted on a quarterly basis, in accordance with Stipulation VIII.A.

B. **Monitoring Implementation of this Agreement**

1. FHWA, the SHPO, and Council may review activities carried out pursuant to this Agreement. UDOT shall facilitate this review by compiling specific categories of information to document the effectiveness of the Agreement and by making this information available on an annual basis to FHWA, the SHPO, and Council in the form of a written report. Categories of information can include, but are not limited to, a summary of actions taken under the Agreement, including all findings and determinations, accomplishments, estimated time and cost savings, public objections, and inadvertent effects or foreclosures. The range and type of information included by UDOT in the written report and the manner in which this information is organized and presented must be such that it facilitates the ability of the reviewing parties to assess accurately the degree to which the Agreement and its manner of implementation constitute an efficient and effective program alternative under 36 CFR 800, and to determine whether this Agreement should remain in effect, and if so, whether and how it should be improved through appropriate amendment.
2. UDOT shall prepare the written report of these findings annually following execution of the Agreement. The initial report shall be prepared following completion of the first full Federal fiscal year under this Agreement. UDOT shall submit the annual reports to FHWA, the SHPO, and Council no later than three (3) months following the end of the Federal fiscal year (September 30).
3. UDOT, FHWA, and SHPO will meet annually to evaluate the Agreement, to suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the Agreement. Prior to any such meetings, the Council will be notified and may participate at its discretion. Thirty days prior to the annual evaluation, UDOT shall submit the report of the previous year's activities to FHWA, SHPO, and Council
4. UDOT shall provide notice to the public that the annual report herein prescribed is available for public inspection and ensure that potentially interested members of the public are made aware of its availability and that the public may comment to signatory parties on the report. FHWA and UDOT, in consultation with the SHPO and Council, shall identify the specific recipients of the public notice herein described.
5. At the request of any other signatory party to this Agreement, FHWA shall ensure that one or more meetings are held to facilitate review of, and comment on, the report to address questions and issues, or to resolve adverse comments.
6. In conjunction with the review of the reports prepared by UDOT pursuant to this Stipulation, the signatory parties shall consult to review the overall effectiveness and benefits of the Agreement, determine if its requirements are being met, decide if amendments to the Agreement are warranted, review the reporting format and categories for adequacy, and identify any other actions that may be needed in order to take into account the effects of the Program on historic properties in Utah.
7. If any signatory party determines that a UDOT Region (there are four) is not meeting its responsibilities under this Agreement, measures will be taken to resolve the concerns with the UDOT PQS, and the Central PQS if appropriate.

C. **Resolving Objections to Implementation of this Agreement**

1. Should any signatory party object in writing to UDOT or FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the

consultation and will take any comments provided by such parties into account. The FHWA shall establish a reasonable time frame for such consultations.

2. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA, with the cooperation of UDOT, shall forward all documentation relevant to the objection to the Council and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, Council shall exercise one of the following options:
   a. Advise FHWA that Council concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly; or
   b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
   c. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR 800.7(c)(4).
4. Should Council not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume Council's concurrence in its proposed response to the objection.
5. FHWA shall take into account any Council recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
7. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
8. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.

D. **Amendment**

1. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment .This Agreement may be amended only upon written concurrence of all signatory parties.
2. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

E. **Termination**

1. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XIII.D, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
2. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
3. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
4. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings, as stated in Stipulation XIII.D.5.
5. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR 800.4-800.6.
6. If this Agreement is terminated and UDOT has assumed Section 106 compliance responsibility in accordance with the MOU in Attachment 1, UDOT shall comply with 36 CFR 800.4 through 800.6.

F. **Confidentiality**

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

G. **Duration of Agreement**

This Agreement shall remain in effect for a period of ten (10) years after the date it takes effect, unless it is terminated prior to that time. Ninety days prior to the conclusion of the ten year period, UDOT will notify all parties in writing. If there are no objections from consulting parties, the term of the Agreement will automatically be extended for an additional ten years. If any party objects to extending the Agreement, or proposes amendments, UDOT will consult with the parties to consider amendments or other actions to avoid termination.

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

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: 4-2-07

Walter Waidelich, Utah Division Administrator

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: 4/4/07

John Fowler, Executive Director

UTAH STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 4-2-07

Wilson Martin, USHPO

INVITED SIGNATORY

UTAH DEPARTMENT OF TRANSPORTATION

By: _____ Date: 4-2-07

John Njord, Executive Director

ATTACHMENT 4

POINTS OF CONTACTS

Indian Peaks Band of Paiute Indians

Primary:
Jeanine ~~Jeanie~~ Borchardt, Band Chairwoman
4728 N. Horseshoe Dr.
Cedar City, UT 84720
(435) 327-1451
Fax Number
Jeanine.Borchardt@ihs.gov

Paiute Indian Tribe of Utah

Secondary:
Dorena Martineau, Cultural Resources Coordinator
440 North Paiute Tribe of Utah
Cedar City, Utah 84720
(435) 586-1112 (ext. 107)
(435) 586-7388 (fax)
Dorena.Martineau@ihs.gov

Secondary:
Lora Tom, Tribal Chairwoman
440 North Paiute Tribe of Utah
Cedar City, Utah 84720
(435) 586-1112 (main number)
(435) 586-0896 (fax)
Lora.Tom@ihs.gov

Federal Highway Administration

Primary:
Ms. Brenda Redwing, Tribal Coordinator
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Brenda.Redwing@dot.gov

Secondary:
Mr. Walter Waidelich, Division Administrator
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Walter.Waidelich@dot.gov

Secondary:
Mr. Edward Woolford
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118-1847
(801) 963-0182 (main number)
(801) 963-0093 (fax)
Edward.Woolford@dot.gov

Utah Department of Transportation

Primary for Region 1:
Mr. James Beers, NEPA/NHPA Specialist
UDOT Region 1
166 West Southwell Street
Ogden, Utah 84404-4194
(801)620-1635 (work)
(801)620-1665 (fax)
jamesbeers@utah.gov

Primary for Region 2:
Mr. Chuck Easton, NEPA/NHPA Specialist
UDOT Region 2
2010 South 2760 West
Salt Lake City, UT 84104
(801)975-4923 (work)
(801)975-4913 (fax)
ceaston@utah.gov

Primary for Region 3:
Ms. Jennifer Elsken, NEPA/NHPA Specialist
UDOT Region 3
658 North 1500 West
Orem, Utah 84057
(801)227-8062 (work)
(801)227-8056 (fax)
jelsken@utah.gov

Primary for Region 4, Richfield and Price District:
Ms. Pam Higgins, NEPA/NHPA Specialist
UDOT Region 4
1345 South 350 West
Richfield, UT 84701
(435)893-4740 (work)
(435)896-6458 (fax)
phiggins@utah.gov

Primary for Region 4, Cedar District:
Ms. Laurel Glidden, NEPA/NHPA Specialist
UDOT Region 4
1470 North Airport Road
P.O. Box 1009
Cedar City, UT 84721-1009
(435)865-5562 (work)
(435)865-5564 (fax)
lglidden@utah.gov

Secondary (Statewide):
Betsy Skinner, Cultural Resource Program Manager
4501 South 2700 West
P.O. Box 148450
Salt Lake City, UT 84114
(801)965-4159 (work)
(801)965-4564 (fax)
eskinner@utah.gov

ATTACHMENT 5

PROJECTS EXEMPTED FROM TRIBAL CONSULTATION

A. Pavement Related

1. Resurfacing the existing roadways without other geometric changes. Existing subbase and original ground remains under the roadway.

2. Sidewalk replacement including no additional excavation outside existing disturbed area. Disturbance is less than 2 feet below existing surface. (Mostly done in urban areas)

B. Maintenance Related

1. Pavement repairs including joint repairs, patching, and crack sealing of roads where the construction does not disturb original ground.

2. Re-striping lines (all type of pavement markings) on roads where they previously existed and new striping when necessary to conform to the Manual on Uniform Traffic Control Devices (MUTCD).

3. Bridge painting of all types of bridges where the construction does not disturb original ground.

4. Bridge and other structure repairs or shoring where the construction does not disturb original ground.

C. Signing Related

1. Installation and replacement of signs including replacement of existing signs in-kind.

2. Installation of driven foundation posts 6" or less in diameter for signs. Drilled shaft foundations up to a maximum diameter of 36"

3. Installation of any other kind of sign that does not disturb original ground.

ATTACHMENT 5

PROJECTS EXEMPTED FROM TRIBAL CONSULTATION

D. Roadside Safety Related

1. Repair, replace or upgrade existing guard rail on highways where construction does not disturb original ground and is driven less than 4 feet.

2. Install or replace impact attenuators on highways where construction does not disturb original ground.

3. Replace median barriers on highways where construction does not disturb original ground.

E. Traffic Monitoring Related

1. Installation and upgrade traffic signal and lighting poles.

2. Installation of highway monitoring systems including loop detectors (or other types of sensors), cameras, radio systems, and variable messaging signs (with the exception of towers) where construction does not disturb original ground.

F. Other Project Types

1. Any project, not specifically mentioned above, where all proposed work will take place on existing roadways within the toe of slope.

2. Replacement of railing on bridges to meet modern safety standards.

3. Streetscape improvement outside a historic district. This includes, but may not be limited to, benches, decorative lighting, textured crosswalks, transit shelters, and containerized plantings where the construction does not disturb original ground.

4. Rehabilitation of historic structures where construction does not disturb original ground.

5. Rehabilitation of historic transportation equipment such as railroad locomotives, and rail cars.

6. Purchase of scenic easements or abandoned rail corridors where no construction activity is planned. Resale of scenic easements is not part of this agreement.

7. Establishment of transportation museums and visitors centers that do not contain any Indian components where construction does not disturb original ground.

ATTACHMENT 6

INITIAL NOTIFICATION FORM

Insert Project Initial Tribal Notification Form

UDOT Project Initial Tribal Notification Form
Section 106 Consultation

(for UDOT use only)

Date: UDOT Project # UDOT PIN Route #

City/County: Contact Name:

elephone: Fax: Email:

Brief Project Description (e.g. adding lanes, bridge replacement, new roadway on new alignment [include map]):

Archaeological Potential (Prehistoric or Historic Sites)

- ☐ Known prehistoric sites in the project area
- ☐ Known historic sites in the project area
- ☐ Likely to find prehistoric sites in the project area
- ☐ Likely to find historic sites in the project area
- ☐ Unlikely to find prehistoric sites in the project area
- ☐ Unlikely to find historic sites in the project area
- ☐ No expected ground disturbance
- ☐ Other

Comments

Tribal Response

(for Tribal use only)

Tribal contact for this project:
Tribe:
Name:
Address:
City, State, Zip:
Telephone:
ax:
Email:
Copies to:

Note: If any of the information to the left is incorrect, please provide changes to the UDOT contact above, or, to:

Betsy Skinner
Cultural Resource Program Manager
Utah Department of Transportation
4501 South 2700 West, Box 148450
Salt Lake City, UT 84114-8450
eskinner@utah.gov

Comments

1. Do you wish to be a Section106 consulting party on this project? ☐ Yes ☐ No ☐ Not Sure
2. If you do not wish to be a Section 106 consulting party, do you wish to continue to be involved in the development of this project? ☐ Yes ☐ No ☐ Not Sure

Note: If your answer is "Not Sure," UDOT will continue to provide information.

3. Are you aware of any traditional religious or culturally important places in or near the project area? ☐ Yes ☐ No ☐ Not Sure
4. If yes, can you share details about the place (e.g., location and other characteristics) and any concerns you may have? ☐ Yes ☐ No
5. Is this information sensitive? ☐ Yes ☐ No

Additional Comments

ame of person completing this form, if different from above (please print):

Signature: Date:

Version:9/29/2008

ATTACHMENT 7

INFORMATION FORM

UDOT Project Information Form
Section 106 Consultation

(for UDOT use only)

Date: UDOT Project # UDOT PIN Route #

City/County: Contact Name:

Telephone: Fax: Email:

Brief Project Description (e.g. adding lanes, bridge replacement, new roadway on new alignment):

Information for which a response is requested (highlight checked line)

1. ☐ Archaeological resources identified
2. ☐ Determinations of eligibility
3. ☐ Determination of effects
4. ☐ Draft testing plan
5. ☐ Draft testing report
6. ☐ Approach to Resolution of Adverse Effects
7. ☐ Draft Memorandum of Agreement
8. ☐ Draft data recovery plan
9. ☐ Draft data recovery report
10. ☐ Other

Enclosures

Documents/Information enclosed:

Comments

Tribal Response

(for Tribal use only)

Tribal contact for this project:
Tribe:
Name:
Address:
City, State, Zip:
Telephone:
Fax:
Email:
Copies to:

Note: If any of the information to the left is incorrect, please provide changes to the UDOT contact above, or, to:

Betsy Skinner
Cultural Resource Program Manager
Utah Department of Transportation
4501 South 2700 West, Box 148450
Salt Lake City, UT 84114-8450
eskinner@utah.gov

Document Comments

1. Was the survey adequate?	☐ Yes	☐ No	☐ Not applicable
Should additional survey be conducted?	☐ Yes	☐ No	☐ Not applicable
2. Do you agree with the recommendations of eligibility?	☐ Yes	☐ No	☐ Not applicable
3. Do you agree with the recommendations of effect?	☐ Yes	☐ No	☐ Not applicable
4. Do you agree with the draft testing plan?	☐ Yes	☐ No	☐ Not applicable
5. Is the draft testing report adequate?	☐ Yes	☐ No	☐ Not applicable
6. Do you agree with the approach to resolution of adverse effects?	☐ Yes	☐ No	☐ Not applicable
7. Do you agree with the draft Memorandum of Agreement?	☐ Yes	☐ No	☐ Not applicable
8. Do you agree with the draft data recovery plan?	☐ Yes	☐ No	☐ Not applicable
9. Is the draft data recovery report adequate?	☐ Yes	☐ No	☐ Not applicable
Do you have any other concerns?	☐ Yes	☐ No	

If yes please inform UDOT how to proceed to address the tribes concerns (add pages if necessary):

Additional Comments

Name of person completing this form, if different from above (please print):

Signature: Date:

Version: 9/29/2008