

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION, THE NEZ PERCE TRIBE,
AND THE IDAHO TRANSPORTATION DEPARTMENT REGARDING
IMPLEMENTATION OF MINOR TRANSPORTATION PROJECTS**

WHEREAS, the Federal Highway Administration (FHWA) proposes to administer and provide funding for the Federal Aid Highway Program within the external boundary of the Nez Perce Indian Reservation in Idaho authorized by 23 U.S.C. 101 et seq. through the Idaho Transportation Department (ITD);

WHEREAS, the FHWA has determined that certain types of routine minor transportation projects may have an effect upon historic properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Nez Perce Tribe pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. § 306108);

WHEREAS, ITD has consulted with the Nez Perce Tribe regarding ITD's functions and role in the implementation of this Programmatic Agreement (PA);

WHEREAS, historic properties are defined as prehistoric and historic archaeological sites, buildings, structures, districts, objects, landscapes, and traditional cultural properties included in or eligible for listing in the National Register of Historic Places (National Register);

WHEREAS, the area of potential effects is defined as the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist;

WHEREAS, properties fifty (50) years old or older shall be treated as potentially eligible for listing in the National Register unless already evaluated for eligibility by the Nez Perce Tribe or Idaho State Historic Preservation Office and found to be not eligible;

WHEREAS, the parties agree that undertakings/actions covered by this PA, within the external boundary of the Nez Perce Indian Reservation, have no potential to affect historic properties or properties of traditional religious and cultural significance to the Nez Perce Tribe, and in the unlikely event that such properties are identified or discovered in the area of potential effects for an undertaking, FHWA and ITD shall consult with Nez Perce Tribe and other parties in accordance with 36 CFR Part 800;

NOW THEREFORE, the FHWA, the Nez Perce Tribe, and ITD agree that minor transportation improvement projects shall be administered in accordance with the following stipulations to satisfy the FHWA's Section 106 responsibility for all individual projects of the program.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

A. Purpose and Applicability

This Agreement sets forth a process by which FHWA, with assistance by ITD, will meet its responsibilities under Sections 106 and 110(d) of the National Historic Preservation Act (NHPA), as amended, for minor transportation projects of the Federal Aid Highway Program which are classified as "categorical exclusions" under 23 CFR 771.115 and 23 CFR 771.117. This Agreement establishes the basis for ITD internal review of individual minor projects and establishes the roles of involved parties throughout the process.

B. Responsibilities of FHWA and ITD

1. In compliance with its responsibilities under NHPA and as a condition of its award of any assistance under the Federal Aid Highway Program to ITD, FHWA shall require ITD to carry out the processes defined below consistent with 36 CFR Part 800 and the applicable standards and guidelines of the Advisory Council on Historic Preservation (ACHP) for all ITD minor transportation projects that receive Federal assistance and approval.
2. ITD shall maintain staff (referred to in this Agreement as "Qualified Professionals") who meet the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61-Appendix A) in archeology, history, or architectural history whose duties shall include activities implementing this Agreement. ITD Qualified Professionals, in consultation with the Nez Perce Tribe, shall be responsible for defining the Area of Potential Effect (APE) for all projects associated with this agreement.
3. ITD comprehensive Environmental Section procedures shall be consistent with and complement the terms of this agreement. This agreement will be appended to the ITD Environmental Section Manual and fully explained therein.
4. ITD and the Nez Perce Tribe shall hold an annual cultural resource management and Section 106 compliance meeting with the focus on this Agreement.
5. For all Federal Aid undertakings, ITD will initiate the Section 106 process by determining whether the actions have the potential to cause effects to historic properties, and carry out the requirements of 36 CFR 800.4 to identify historic properties that might be affected by the proposed actions.
6. Certain minor highway improvement projects, as identified in Appendix A, have been determined unlikely to affect historic properties. The ITD Qualified Professionals will review all undertakings to determine whether they meet the requirements in Appendix A for exemption from further review. If ITD Qualified Professionals determines that the undertaking does not meet the requirements for exemption, they shall carry out the requirements of 36 CFR Part 800 for that undertaking.
7. All other all undertakings/actions requiring Federal assistance and approval not listed in Appendix A attached to this Agreement shall be subject to Section 106 and its implementing regulations, 36 CFR Part 800.

C. Reporting

The ITD Qualified Professionals will prepare an annual summary report of undertakings/actions cleared under this agreement, within the Nez Perce Reservation boundary during the previous calendar year. ITD shall submit the report to FHWA and the Nez Perce Tribe no later than the close of each calendar year, and this report may be contained with ITD's Annual Report presently submitted to Nez Perce Tribe.

The ITD Qualified Professionals will complete post-construction monitoring of a minimum of 10% of the projects carried out under this PA to ensure that actual construction activities were the same as those proposed under the project description used to issue clearance programmatically.

For those undertakings/actions meeting the condition defined in Appendix A, ITD Qualified Professionals shall exercise their expertise that the above conditions are being met, and shall document that no further review shall be necessary and shall include that finding on an ITD Form 1502 which will become part of the overall environmental documentation.

D. Amendments

1. Any party to this PA may request in writing that it be amended, whereupon the parties will consult to consider such amendment.
2. Any party to this PA may request a revision to Appendix A. Revisions to Appendix A may be made and will go into effect upon the written agreement of the signatories to this PA. Such revisions do not require that this PA be formally amended; however, ITD shall provide a clean copy of the revised Appendix A, clearly identifying the date it became effective, to the signatories for their files.
3. Should the Nez Perce Tribe object to any actions proposed pursuant to this PA, the FHWA shall consult with the Nez Perce Tribe to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall request the views of the Advisory Council On Historic Preservation (ACHP) pursuant to 36 CFR 800.2(b)(2) or 800.9(a). Any ACHP comment provided in response to such a request will be taken into account by the FHWA with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this PA that are not the subjects of the dispute will remain unchanged.
4. Any party to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreements or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR Part 800 with regard to individual undertakings covered by this PA.
5. In the event the FHWA does not carry out the terms of this PA, the FHWA will comply with 36 CFR Part 800 with regard to individual undertakings covered by this PA.

SIGNATURES

FEDERAL HIGHWAY ADMINISTRATION

By: *Deby J. Hartman* Date: 11/5/15

NEZ PERCE TRIBE

By: *Anthony D. Johnson* Date: 11/2/15
Anthony D. Johnson, Chairman
Nez Perce Tribal Executive Committee

IDAHO TRANSPORTATION DEPARTMENT

By: *David B. Kuetsi* Date: 11-4-15