

**MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
the
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
and the
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE
PURSUANT TO 36 CFR § 800.6
regarding the
I-26 CONNECTOR
BUNCOMBE COUNTY, NORTH CAROLINA
NCDOT TIP No. I-2513 FA No. MANHF-26-1(53)**

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 North Carolina by funding and approving transportation projects that are administered by the North Carolina Department of Transportation (NCDOT), and FHWA plans to fund the I-26 Connector project in Buncombe County, NC (the Undertaking); and

WHEREAS, the North Carolina FHWA Division Administrator is the "Agency Official" responsible for ensuring that the Program in the state of North Carolina complies with Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, the Undertaking consists of improvements to the I-40 interchanges with Smoky Park Highway, I-26/I-240 and Brevard Road (Section C), upgrading I-240 (as well as interchanges at Brevard Road, Amboy Road, and Haywood Road) from the I-26/I-240 interchange with I-40 to the I-240 interchange with Patton Avenue, west of the French Broad River (Section A), and constructing I-26 on new location from the Patton Avenue interchange north across the French Broad River, tying into US 19/23/70 south of Broadway (Section B); and

WHEREAS, the FHWA has determined that the Undertaking will have an adverse effect upon Riverside Cemetery, a contributing element within the Montford Area Historic District, and archaeological site 31BN826, properties listed in or determined eligible for listing in the National Register of Historic Places (NRHP), (hereinafter historic property/ies); and

WHEREAS, the FHWA has determined that the Undertaking will have no adverse effect upon the following historic properties: Freeman House, William Worley House, West Asheville/Aycock School Historic District, Great Smoky Mountain Park Bridge (Buncombe County Bridge No. 323), and archaeological site 31BN623 (Lower Hominy Hydroelectric Plant) provided the environmental commitments stipulated in this Memorandum of Agreement (MOA) are fulfilled; and

WHEREAS, the FHWA has consulted with the North Carolina State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA; and

WHEREAS, FHWA has notified the Advisory Council on Historic Preservation (Council) of the adverse effects and the Council has declined to comment or participate in the consultation; and

WHEREAS, NCDOT has participated in the consultation and has been invited by the FHWA and SHPO to be a signatory to this MOA; and

WHEREAS, the following parties were granted consulting party status by FHWA and have been invited to concur with this MOA: the Montford Neighborhood Association, the City of Asheville Transportation and Planning and Urban Design Departments, and the Preservation Society of Asheville and Buncombe County; and

WHEREAS, the following Tribal Historic Preservation Offices (THPO) were consulted regarding this Undertaking and have been invited to concur with this MOA: Eastern Band of the Cherokee Indians (EBCI), the Cherokee Nation (CN), the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB), the Muscogee (Creek) Nation (MCN), and the Catawba Nation; and

WHEREAS, the consulting parties agree that the recovery of significant information from archaeological site 31BN826 may be done in accordance with the published guidance from the Council and the North Carolina Office of State Archaeology; and

WHEREAS, the consulting parties agree that it is in the public interest to expend funds for the recovery of significant information from archaeological site 31BN826 to mitigate the adverse effect of the Undertaking; and

WHEREAS, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work:

NOW THEREFORE, the FHWA, NCDOT and the North Carolina SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations take into account the effects of the Undertaking on historic properties, archaeological site 31BN826, and any archaeological resource identified during further testing and determined eligible for the NRHP.

STIPULATIONS

The North Carolina Division of FHWA and NCDOT shall ensure that the following measures are implemented:

I. Riverside Cemetery within the Montford Area Historic District (BN0022)

After consultation with the SHPO, the Asheville City Parks and Recreation Department, the Montford Neighborhood Association, the City of Asheville Transportation and Planning and Urban Design Departments, and the Preservation Society of Asheville and Buncombe County, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Vibration Studies and Monitoring Plan

- a. Development of Vibration Monitoring Plan: NCDOT's Geotechnical Engineering Unit, in consultation with NCDOT Division 13, shall develop a vibration monitoring plan for the Undertaking, to include on-site research during final design as well as monitoring during construction. The recommendations of the plan shall be provided to SHPO and concurring parties (except for the EBCI, CN, UKB, MCN, and Catawba Nation) for their comments prior to adoption.
- b. Baseline Studies: On-site research, done prior to construction, will measure existing vibration exposure, determine sensitivity of key funerary monuments and assign thresholds accordingly.
- c. Vibration Monitoring: Vibration monitoring will be conducted on key funerary monuments within Riverside Cemetery, recommended in the aforementioned vibration monitoring plan. When a reading exceeds the established threshold, an alarm will sound and the Contractor or the cemetery manager shall immediately contact NCDOT's Division 13 Resident Engineer to assess the situation.
- d. Pre-construction Surveys: NCDOT will conduct pre-construction surveys of all key funerary monuments within Riverside Cemetery to record a "before" condition so that any construction-related damage can be accurately identified. The City of Asheville shall identify the key funerary monuments to be included in the Vibration Monitoring Plan, pre-construction surveys and inventories noted above

2. Auditory Effects:

- a. Design Noise Report: In accordance with the Department's Traffic Noise Policy, NCDOT's Design Build Team, shall complete a Design Noise Report for the Undertaking which includes recommendations for abatement measures for traffic noise impacts. If the Design Noise Report concludes that noise wall barriers along the boundaries of the Montford Historic District are preliminarily deemed to meet feasibility and reasonableness criteria then further consultation on the appearance of the barriers will be required with SHPO and the concurring parties.
- b. Pavement: NCDOT is not proposing pavement as a noise abatement for this project, however, in accordance with all design standards/criteria, NCDOT elects to use low noise pavement surface treatments for any concrete and/or

asphalt surfaces and minimize the number of joints on the roadway structures in the vicinity of Riverside Cemetery. NCDOT cannot commit to the utilization of these specific surface treatments in perpetuity or to maintenance schedules that keep the auditory qualities of these lower noise pavement designs at their premium.

- c. Memorandum of Understanding: NCDOT's Division 13 will develop a Memorandum of Understanding (MOU) with the Asheville City Parks and Recreation Department to outline how the city will notify NCDOT of funerals. Protocols will be established to limit construction noise during such events.

3. Right-Of-Way

- a. Pre-Construction Tree Survey: It is understood that all existing vegetation and trees within the highway right-of-way parallel to the Riverside Cemetery will likely be removed during construction. To mitigate these impacts along the Riverside Cemetery boundary, NCDOT's Design-Build Team shall conduct a tree survey of existing trees exceeding 6.0" diameter that are targeted for removal within the existing highway Right-Of-Way, will remain in the existing highway Right-Of-Way, or are within the Riverside Cemetery that their root system may be impacted during construction. The Design-Build Team's survey shall include in its documentation, but not be limited to the following information: 1) tree species and measurements (DBH, canopy width, and height), 2) approximate age, and 3) overall health/life expectancy, and 4) potential construction impacts, as well as management recommendations for trees adjacent to the highway Right-Of-Way that may be impacted. The recommendation may include, but not limited to, additional fertilization, pruning or overall removal and replacement.
- b. Planting within highway Right-Of-Way: Re-vegetation of the highway right-of-way parallel to the cemetery boundary will be planned and implemented in accordance with NCDOT's Guidelines for Planting within Highway Right-of-Way. All new plant materials will be warranted for three growing seasons and replaced by NCDOT if they fail within that time.
- c. Planting within highway Right-Of-Way will be congruent with existing vegetation and trees along the Riverside Cemetery boundary.
- d. Replacement of Trees: If trees within Riverside Cemetery are damaged due to construction within the highway Right-Of-Way then NCDOT will follow the management recommendations in the pre-construction tree survey (additional fertilization, pruning, or overall removal and replacement). Replacement of trees will follow Asheville's Code of Ordinances Section 7-11-13 (landscape & buffering standards) and Appendix 7-C (recommended species list). All new plant materials will be warranted for three growing seasons and replaced by NCDOT if they fail within that time.
- e. Right-Of-Way Fence: The fence that marks the highway Right-Of-Way parallel to the cemetery boundary will be a black metal fence that is approved by the Asheville City Parks and Recreation Department, the SHPO, and NCDOT.

4. Landscaping within Riverside Cemetery:

- a. Additional areas of concentrated landscaping will be included within the boundaries of Riverside Cemetery adjacent to the highway and will be developed through consultation with the Asheville City Parks and Recreation Department, SHPO, and other concurring parties.
 - b. Landscaping will follow Asheville’s Code of Ordinances Section 7-11-13 (landscape & buffering standards) and Appendix 7-C (recommended species list). All new plant materials will be warranted for three growing seasons and replaced by NCDOT if they fail within that time.
 - c. Preliminary Post-Construction Landscape Design plans will be provided to SHPO, the Asheville City Parks and Recreation Department, and the concurring parties for their review and comment.
 - d. NCDOT (or its contractor) shall install the landscaping after completion of roadway construction work along the historic boundary of the cemetery. All new plant materials will be warranted for three growing seasons and replaced by NCDOT if they fail within that time.
5. Roadway Design and Appearance:
- a. In accordance with all design standards / criteria, NCDOT’s Design-Build Team will be encouraged to modify the Department’s preliminary design in proximity to the Riverside Cemetery. Specifically, along the Cemetery boundary, the Design-Build Team will be encouraged to lower the US 19/US 23/US 70 roadway and shift the facility westward without incorporating design exceptions or increasing right of way impacts or relocations.
 - b. The retaining wall will be designed to extend along the entire Riverside Cemetery boundary adjacent to the proposed project.
 - c. The appearance of the retaining walls along the cemetery’s boundary will be formed concrete walls with a simulated masonry surface treatment. The surface treatment will be designed to resemble stacked stone walls and may be painted, stained, or tinted. Choices of aesthetic wall treatments will be provided to SHPO, the Asheville Transportation Department, the Asheville City Parks and Recreation Department, and the concurring parties for their review and comment prior to final approval. The preferred surface texture and color will be included in NCDOT’s final design.
6. Roadway Lighting: Roadway lighting will be designed and constructed to minimize the dispersion of light (“spillover”) beyond the highway Right-Of-Way. NCDOT will not install high mast poles adjacent to the cemetery. Instead NCDOT will install single pole, shoulder and/or barrier mounted, lighting with LED illumination in this area.
7. Duke Energy Line Relocation: The transmission lines currently on Courtland Place will be rerouted northwest to a point near the southwest boundary of Riverside Cemetery and US 19/US 70.
- a. A 70-foot Permanent Utility Easement (PUE) will be cleared of trees and a single pole erected to hold the lines. Duke Energy will erect the shortest pole that meets the needs of the line in this location.
 - b. Prior to construction Duke Energy will flag any “danger trees” located outside the 70-foot PUE that are adjacent to or within the boundaries of the cemetery. If any “danger trees” exist, Duke Energy will consult with NCDOT, SHPO

and the Asheville City Parks and Recreation Department prior to any removal of the “danger trees” and will prioritize tree trimming over removal and replacement.

II. Freeman House (BN2470)

After consultation with the SHPO and the property owner, NCDOT agrees to lessen the audible and visual impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Noise Abatement: Upon satisfactory completion of the work, NCDOT will reimburse the property owner for the costs to install central heat/AC, storm windows, and insulation based on the lowest of 3 bids provided to NCDOT by the property owner. If the property owner chooses, NCDOT will make payment directly to a third-party contractor(s).
2. Landscaping: NCDOT (or its contractor) shall install landscaping along the edges of the property facing the new facility after completion of the project. All new plant materials will be warranted for three growing seasons and replaced by NCDOT if they fail within that time period.

III. William Worley House (BN2442)

After consultation with the SHPO and the property owner, NCDOT agrees to lessen the audible and property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Noise Abatement: Upon satisfactory completion of the work, NCDOT will reimburse the property owner for the costs to install central heat/AC, storm windows, and insulation based on the lowest of 3 bids provided to NCDOT by the property owner. If the property owner chooses, NCDOT will make payment directly to a third-party contractor(s).
2. Retaining Wall: NCDOT will install a retaining wall, with permanent underground easements, within the property boundary along the western boundary of the property to reduce right-of-way impacts.

IV. West Asheville/Aycock School Historic District (BN1839)

After consultation with the SHPO, the principal of Aycock School, and the Asheville School District Superintendent, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing funding or services for the following measures.

1. Parking: To minimize Aycock’s School’s loss of parking spaces, NCDOT has agreed to provide the school with new parking lots and vehicular circulation routes as shown on the plans provided to SHPO on October 7, 2019.
2. Trees: NCDOT will preserve the screening trees along the west side of classrooms by erecting temporary fencing around the trees and tree protection signs, during construction.
3. Fencing: NCDOT will install permanent fencing (a minimum of 6 feet in height and of the school’s chosen materials) between the Greenway and the west side of

the school yard.

4. Protection measures: NCDOT will protect the trees and Arrowhead monument on school grounds along Haywood Road by erecting tree protection signs and temporary fencing around the trees and monument, during construction.

V. Great Smoky Mountain Park Bridge (Buncombe County Bridge No. 323)

(BN2469 - Patton Avenue Westbound)

After consultation with the SHPO and the Asheville Aesthetics Advisory Committee, NCDOT agrees to remove the cantilevered sidewalk and convert the bridge to a two-lane facility with a minimum 10-foot sidewalk on the existing deck. The existing bridge rails and pedestrian lights will be replaced with designs that meet current safety standards and are congruent with the original “art moderne” style of the bridge.

1. The SHPO concurred in a letter dated June 19, 2020 that the subject undertaking will not adversely affect the bridge. Any changes to the bridge concepts after the execution of this MOA, as shown in the renderings appended to this document, shall require approval from NCDOT structure design and the SHPO.
2. Any repairs to the historic substructure shall follow the *Secretary of the Interior’s Standards for Rehabilitation*.
3. Additional streetscape enhancements such as benches, planters, ornamental lights, or flags shall require approval from NCDOT structure design and the SHPO.

VI. Archaeological Site 31BN623 (Lower Hominy Hydroelectric Plant)

After consultation with the SHPO, NCDOT agrees to lessen the property impacts resulting from the Undertaking by providing services for the following measures.

1. Iron markers will be placed at each end of a wall associated with site 31BN623 to mark its extent prior to the placement of fill within the project limits. The exact locations of the markers will be provided to the SHPO for its records.
2. Any changes in the vicinity of 31BN623 to the preferred alternative preliminary design after the execution of this MOA shall require approval from the SHPO.

VII. Data Recovery at Archaeological Site 31BN826 and Further Deep Testing at Archaeological Sites 31BN823, 31BN826, 31BN868, 31BN870, 31BN871, 31BN873 and 22 Additional Acres

1. In consultation with the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation NCDOT will develop a Data Recovery Plan (DRP) for Site 31BN826, which has been determined eligible for the NRHP and will be affected by the Undertaking.
2. If Sites 31BN823, 31BN868, 31BN870, 31BN871, 31BN873 and any new sites are determined eligible for the NRHP through further testing and affected by the Undertaking, NCDOT, in consultation with the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation, will develop, separate DRPs for those sites.
3. NCDOT will ensure that the DRPs, are implemented after the highway Right-Of-Way is acquired and prior to construction activities within the site location.
4. Upon completion of the Data Recovery efforts, NCDOT will prepare and forward a Management Summary to the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation detailing the results of the Data Recovery efforts for all the eligible sites.

5. Upon receipt of the Management Summary, the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation will respond within fifteen (15) days to the recommendations contained within the Management Summary.
6. Upon acceptance of the recommendations contained in the Management Summary, the SHPO, EBCI, CN, UKB, MCN, and Catawba Nation will issue NCDOT documentation that the Data Recovery field investigations have been completed.
7. The analysis and report preparation, detailing the eligible sites, will be completed by NCDOT, or their consultant(s), within eighteen (18) months after completion of the fieldwork.

VIII. Unanticipated Discoveries

In accordance with 36 CFR 800.11(a), if NCDOT identifies additional cultural resource(s) during construction, all work will be halted within the limits of the resource(s) and the FHWA and the SHPO will be contacted. The NCDOT and FHWA will initiate the appropriate agency and/or Tribal coordination required for a determination of eligibility or recovery effort. If after consultation between the Signatories and concurring parties, additional mitigation is determined necessary, the NCDOT, in consultation with the Signatories and concurring parties, will develop and implement appropriate protection/mitigation measures for the resource(s). Inadvertent or accidental discovery of human remains will be handled in accordance with North Carolina General Statutes 65 and 70.

IX. Amendments

Should any of the Signatory Party(ies) to this MOA believe that its terms cannot be carried out or that an amendment to the terms must be made, that party(ies) shall immediately consult with the other party(ies) to develop amendments in accordance with 36 CFR 800.6(c)(7). This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy, signed by all the signatories, is filed with the ACHP. If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation X will be followed.

X. Dispute Resolution

Should any of the Parties to this MOA object within thirty (30) days to any plans or documentation provided for review pursuant to this MOA, the FHWA shall consult with the objecting party(ies) to resolve the objection. If the FHWA or the objecting party(ies) determines that the objection cannot be resolved, the FHWA will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

1. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute, or
2. Notify the FHWA that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Section 800.7(c)(4) with reference to the subject of the dispute.

Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; the signatories' responsibilities that are not the subject of the dispute will remain unchanged.

XI. Termination

Any of the Signatory Party(ies) to this MOA may terminate the MOA by providing notice to the other parties, provided that the signatories and concurring parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA will require compliance with 36 CFR 800. This MOA may be terminated by the execution of a subsequent MOA that explicitly terminates or supersedes its terms.

XII. Duration

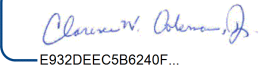
Unless terminated pursuant to Stipulation XI above, this MOA will be in effect until the FHWA in consultation with the other Signatory Parties, determines that each of its terms have been fulfilled or if NCDOT is unable or decides not to construct the Undertaking.

Execution

Execution of this MOA by FHWA, NCDOT, and the North Carolina SHPO, its subsequent filing with the Council, and implementation of its terms evidence that the FHWA has afforded the Council an opportunity to comment on the Undertaking, and that FHWA has taken into account the effect of the Undertaking on the historic properties and archaeological sites 31BN623 and 31BN826.

AGREE:

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, NORTH CAROLINA DIVISION

By:  E932DEEC5B6240F... Date 1/28/2021
John Sullivan, PE, Division Administrator

STATE OF NORTH CAROLINA, DEPARTMENT OF TRANSPORTATION

By:  2AC982A09DAA465... Date 1/27/2021
Chris M. Werner, P.E., Technical Services Administrator

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE

By:  F9A65F9BC4204D5... Date 1/27/2021
Ramona M. Bartos, State Historic Preservation Officer

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CONCUR:

Eastern Band of the Cherokee Indians:

The Honorable Richard Sneed
Principal Chief
Eastern Band of the Cherokee Indians

Date

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CONCUR:

The Cherokee Nation:

The Honorable Chuck Hoskin, Jr.
Principal Chief
Cherokee Nation

Date

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CONCUR:

The United Keetoowah Band of Cherokee Indians in Oklahoma:

The Honorable Joe Bunch Chief United Keetoowah Band of Cherokee Indians in Oklahoma	Date

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CONCUR:

Muscogee (Creek) Nation:

The Honorable David Hill
Principal Chief
Muscogee (Creek) Nation

Date

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CONCUR:

Catawba Nation:

William Harris
Principal Chief
Catawba Nation

Date

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CONCUR:

Montford Neighborhood Association:

Michael McDonough
Board President
Montford Neighborhood Association

Date

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CONCUR:

City of Asheville:

Debra Campbell
City Manager
City of Asheville

Date

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CONCUR:

Preservation Society of Asheville and Buncombe County:

Jesse Landl Executive Director Preservation Society of Asheville and Buncombe County	Date

Appendix – Bowen Bridge Renderings of May 2020