

APPENDIX 3
Inadvertent Discovery Plan

- A. Unanticipated Impacts to Standing Structure Historic Properties:** if the undertaking causes unanticipated impacts to any National Register of Historic Places (NRHP) eligible, listed, or contributing buildings, sites, structures, or objects of the built environment, the contractor must notify the engineer and immediately cease any activity causing ongoing damage until consultation occurs. The MDOT SHA, and MDTA where applicable, shall, in consultation with the MD SHPO, determine if adverse effects have occurred to the property/properties and develop a plan for the protection of the historic property, and minimization or mitigation of impacts. If mitigation is identified, FHWA, MDOT SHA, MD SHPO, and other signatories as necessary will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. MDOT SHA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- B. Unanticipated Damage to Known Archaeological Resources:** if unauthorized excavation occurs outside the approved limits of disturbance or other approved boundaries designed to protect archaeological resources and thereby causes impacts to known, NRHP-eligible archaeological resources, MDOT SHA and/or MDTA will require its contractor to cease any activity causing ongoing damage until consultation occurs. MDOT SHA and/or MDTA shall conduct a damage assessment consistent with the model used for such assessments under the Archaeological Resources Protection Act (<https://www.nps.gov/archeology/pubs/techbr/tchBrf20.pdf>). MDOT SHA will use the results of the assessment in consultation with the MD SHPO to determine if the resource has been adversely affected and determine appropriate mitigation. If the resource is of known or suspected Native American affiliation, MDOT SHA and/or FHWA shall consult with federally recognized Indian Tribes as appropriate. If mitigation is identified, FHWA, MDOT SHA, MD SHPO, and other signatories as necessary will execute a Memorandum of Agreement or amend an existing Memorandum of Agreement for the project to record the identified mitigation. MDOT SHA and/or MDTA may hold its contractor liable for any or all costs resulting from this process following appropriate processes identified in its contract instruments.
- C. Unanticipated Discovery of Human Remains:** Should any burials, interments, or human remains (hereafter, “remains”) be encountered during construction, all applicable construction work in the vicinity of the remains will be immediately stopped to prevent damage to the remains, or to any additional remains that might be present in the vicinity. A minimum 100-foot buffer around identified remains should be established free of disturbance, to be adjusted as appropriate for the site conditions. Construction may occur outside the buffer unless evidence of additional remains is found. If remains are suspected to be human but not confirmed, MDOT SHA will ensure that such confirmation is made by a qualified professional. Human remains will at all times be treated respectfully and access and visibility limited to the site of discovery to authorized personnel only. Pursuant to State of Maryland Criminal Code § 10-402, the State’s Attorney must authorize movement or removal of any remains until determined to be archaeological. If the remains are determined to be archaeological, MDOT SHA and MD SHPO will consult to determine treatment of the remains and any other necessary treatment such as work needed to define extent of remains in the most expeditious manner feasible. If the remains are determined archaeological and suspected to be of Native American origin, MDOT SHA, in coordination with FHWA, shall provide notification to tribal governments in accordance with any expressed tribal consultation preferences within 24 hours or as soon as practicable. MDOT

SHA and/or FHWA will consult with affected federally recognized Indian Tribes, the Maryland Commission on Indian Affairs and relevant Maryland Indian groups as appropriate regarding treatment of the remains. MDOT SHA and/or MDTA will accommodate tribal cultural preferences to the extent practicable during such an event.

In consultation with the MD SHPO, Federally Recognized Indian Tribes, and FHWA as appropriate, the MDOT SHA shall develop a plan for the treatment or disposition of the remains. The MDOT SHA and/or MDTA shall implement the provisions of the agreed Treatment Plan.

Should the remains be associated with, or constitute an intact archaeological resource, provision **D** below is also applicable.

- D. Unanticipated Discovery of Archaeological Resources:** If previously unidentified archaeological features, artifacts, or other materials (hereafter, “resource”) are discovered during construction, all ground-disturbing work in the vicinity of the resource shall be temporarily suspended or modified to prevent further damage to the resource, and provide a reasonable buffer for extent of the resource that may not be exposed.

The MDOT SHA archaeologist shall perform a preliminary inspection to identify the resource and evaluate its NRHP eligibility. Following this inspection, construction may resume in the vicinity of but outside the boundary of the archaeological resource as defined by the MDOT SHA archaeologist. If the resource is potentially eligible for the NRHP, MDOT SHA will consult with MD SHPO on an eligibility determination and, if determined eligible for the NRHP, every effort shall be made to minimize impacts through redesign or modification of construction methods. If the resource is of known or suspected Native American affiliation, MDOT SHA and/or FHWA shall consult with federally recognized Indian Tribes as appropriate.

In consultation with the MD SHPO, the MDOT SHA archaeologist shall develop a plan for the treatment of any resource determined eligible. MDOT SHA shall describe actions proposed to avoid, minimize, or mitigate adverse effects, and request the MD SHPO and tribal comments as appropriate within two (2) working days.

MDOT SHA, and/or MDTA as appropriate, shall then implement the provisions of the agreed-upon plan.