

**MEMORANDUM OF AGREEMENT  
AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR  
KINSTON BYPASS (US 70 FROM LAGRANGE TO DOVER)  
IN LENOIR, JONES, AND CRAVEN COUNTIES, NORTH CAROLINA  
USACE AID No. SAW-2009-01603  
STIP No. R-2553      WBS No. 34460**

**WHEREAS** the U.S. Army Corps of Engineers, Wilmington District (USACE) is considering issuance of a permit under Section 404 of the Clean Water Act (CWA) and, if required by final design, Section 10 of the Rivers and Harbors Act (RHA) of 1899, to the North Carolina Department of Transportation (NCDOT) for the Kinston Bypass, a proposed four-lane, median divided freeway with full control of access from US 70 near La Grange to US 70 near Dover in Lenoir, Jones, and Craven Counties, North Carolina (the Undertaking); and

**WHEREAS** the consideration and issuance of a permit by the USACE makes the project an Undertaking subject to review by the USACE under Section 106 (54 U.S.C. § 306108) of the National Historic Preservation Act (NHPA) (54 U.S.C. §§ 300101 et seq.) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

**WHEREAS** the USACE has consulted with the North Carolina State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800); and

**WHEREAS** the North Carolina Historic Preservation Office (HPO) and Office of State Archaeology (OSA) are responsible to the SHPO for the implementation of state and federal historic preservation and archaeological protection laws; and

**WHEREAS** USACE has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects and the ACHP has formally entered the consultation to develop steps to resolve the adverse effects of the Undertaking as set forth in this Memorandum of Agreement (MOA); and

**WHEREAS** NCDOT, the proponent for the undertaking and permit applicant, has participated in the consultation and has been invited by the USACE and SHPO to join them as a Signatory to this MOA; and §

**WHEREAS** the following parties were invited to be or accepted as consulting parties by USACE and have been included in the consultation regarding this Undertaking and invited to concur in this MOA/PA: Civil War Preservation Trust; CSS Neuse Civil War Interpretive Center; Dr. Lyle Holland; Cape Fear Civil War Round Table; Civil War Trails®; Dr. Lawrence Babits; Wade Sokolosky; William Fred Fulcher; Lenoir County Historic Association; African American Heritage Commission of Lenoir County; Down East /Eastern Carolina Rural Planning

Organization; Jones County Planning Commission; American Battlefield Protection Program/NPS; Office of Army Cemeteries; Historical Preservation Group; Bryan A. King (Kelly's Millpond); Etta and Scott Maret; and Gary Herring; and

**WHEREAS** the following Tribal Historic Preservation Offices (THPO) have been notified regarding the Undertaking, invited to be consulting parties, and invited to concur in this MOA: the Tuscarora Nation and the Catawba Indian Nation; and

**WHEREAS** the initial Area of Potential Effects (APE) for the undertaking was defined as the 242,000 acre study area established for the undertaking in 2010 and NCDOT carried out a reasonable and good faith effort to identify historic properties within the APE; and

**WHEREAS** refinements to the initial APE led to historic architectural field surveys being completed for the twelve detailed study alternatives evaluated in the undertaking's Draft Environmental Impact Statement (DEIS) and archaeological field investigations being completed within the maximum extent of potential ground-disturbing activities including permanent and temporary easements associated with the preferred alternative selected for the undertaking; and

**WHEREAS** all historic architectural and archaeological field investigations were completed under the supervision of staff that meet the Secretary of the Interior's Professional Qualification Standards; and

**WHEREAS** the USACE has determined in consultation with the SHPO and consulting parties that the Undertaking will have an adverse effect upon the Cobb-King-Humphrey House (LR1197), Wyse Fork Battlefield (JN0306), and Archaeological Site 31LR472, properties listed in or determined eligible for listing in the National Register of Historic Places (NRHP) (historic properties); and

**WHEREAS** the North Carolina Office of State Archaeology (OSA) has requested that specific archaeological information regarding Archaeological Site 31LR472 only be shared with the Signatories, the Tuscarora Nation, and the Catawba Indian Nation.

**WHEREAS** the USACE and NCDOT have provided the public with information about the Undertaking and its effects on historic properties and sought public comment and input, consistent with 36 CFR § 800.2(d) by publishing the Notice of Availability of the Draft Environmental Impact Statement in the Federal Register on July 22, 2019, through Open Houses on August 17, 19, and 20, 2019, and a Corridor Public Hearing on August 20, 2019; and

**WHEREAS** the USACE and NCDOT have consulted with the consulting parties on June 15, 2022, and November 9, 2023, about the Undertaking and its effects on historic properties, to seek ways to resolve the adverse effects, and have taken all comments received from these parties into account; and

**NOW, THEREFORE**, USACE, NCDOT, SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

## STIPULATIONS

USACE shall ensure that the following measures are carried out:

### **I. Permit Conditions**

USACE shall include compliance with the terms of this MOA as a special condition on any authorizations it issues for the Undertaking.

### **II. Cobb-King-Humphrey House (LR1197)**

#### **A. Service Road**

1. NCDOT agrees not to construct a service road along the southern boundary of the Cobb-King-Humphrey House (Lenoir County PIN 453404710793).

#### **B. Driveway Relocation**

1. NCDOT will work with the property owners of Cobb-King-Humphrey House (Lenoir County PIN 453404710793) to provide a new driveway from the eastern boundary of the historic property.

2. The construction of this driveway may require additional archaeological surveys; therefore, after the location of the driveway is determined, NCDOT will consult with the SHPO, USACE, and the property owners on the need for such a survey. If it is warranted, NCDOT will conduct an archaeological survey prior to construction activities associated with the driveway relocation.

3. Upon completion of the archaeological fieldwork and prior to the start of construction, NCDOT will ensure that a Management Summary (MS): LR1197 will be prepared that contains summarized descriptions of results of the field surveys and will provide this information to the SHPO, USACE, and the property owners for their comments.

4. Upon completion of the archaeological survey fieldwork NCDOT will ensure that the results of the driveway investigations will be addressed in an addendum to the existing R-2553 archaeological technical report or incorporated in the data recovery investigations for Wyse Fork Battlefield as deemed appropriate in consultation between NCDOT, the SHPO, and USACE.

#### **C. Control of Access Fencing**

1. NCDOT will work with the property owner to design and erect fencing along the new Control of Access at the southern boundary of the historic property.

2. It will be NCDOT's responsibility to maintain the fencing since it will mark the extent of the Control of Access.

#### **D. Landscaping**

1. NCDOT will work with the property owner to design and install a landscape buffer along the southern boundary of the historic property. NCDOT will include the proposed landscaping plan with the 65% roadway design plan and provide it to the property owners and SHPO for comment. NCDOT Roadside Environmental landscape architects will incorporate any comments on the species or plant placement to the maximum extent practicable to reflect the wishes of the property owner.

2. NCDOT will install the vegetation and replace specimens in-kind if they do not thrive within the first two (2) years or until thriving vegetation is established.

### **III. Wyse Fork Battlefield (JN0306)**

#### **A. Archeological Research/Field Methodology**

1. NCDOT will develop a Data Recovery Plan for the Wyse Fork Battlefield (WFDRP), which will be affected by the subject project, in consultation with the SHPO, USACE, and the Consulting Parties.

a. The WFDRP will utilize the 2017 NRHP nomination for Wyse Fork Battlefield to develop appropriate research questions that may be addressed as part of the mitigation.

b. Additional geophysical (i.e., intensive metal detection) work within the core area(s) of Wyse Fork Battlefield within the archaeological Area of Potential Effects (APE) will be incorporated into the WFDRP and will be implemented prior to large-scale stripping activities and feature excavation to inform potentially extant evidence of battlefield movements. The archaeological APE is defined as the maximum extent of ground disturbing activities including permanent and temporary easements and staging areas associated with the Undertaking.

c. Subsurface investigations will be limited to the archaeological APE.

d. Large-scale stripping activities and excavation within the ROW will be conducted in and around all anomalies of archaeological interest within the archaeological APE to verify the absence or presence of any burials of human remains, as suggested by ground-penetrating radar (GPR) data. Any such burials found will be administered by the process detailed in the

R-2553 US 70 Kinston Bypass Plan for Treatment of Discovered, Unmarked Burials included in the Appendix.

e. The NCDOT will ensure that the WFDRP will be implemented after ROW is acquired and prior to construction activities within the core battlefield areas as shown in the WFDRP.

2. Subsequent to completion of the WFDRP fieldwork and prior to the start of construction, NCDOT will ensure that a Management Summary (MS): JN0306 is prepared that contains summarized descriptions of the size, extent, and results of the excavations and field samples/studies undertaken for completion of the Data Recovery fieldwork.

a. The MS: JN0306 will include a discussion of the nature and number of features identified and excavated, the nature of the artifacts, and other data recovered, in both qualitative and general quantitative terms. The document will also include tabular, graphic, map, and other data as appropriate to illustrate the extent of field excavations.

b. The MS: JN0306 will also present additional analysis or research to be conducted and incorporated into the draft Data Recovery Report.

c. The information presented in the MS: JN0306 should provide a preliminary summary of the nature of the results and be sufficient to allow all Signatories to assess whether the fieldwork requirements set forth in the WFDRP have been met.

d. The MS: JN0306 will be reviewed and approved by designated OSA reviewer, USACE Wilmington District's Archaeologist, and designated NCDOT Archaeologist, all of whom shall meet the *Secretary of the Interior's Standards and Guidelines: Archeology and Historic Preservation Professional Qualifications Standards*, to ensure compliance with the approved Data Recovery Plan.

e. The MS: JN0306 will be submitted electronically by NCDOT to OSA through the Environmental Review branch in Historic Preservation Office (HPO) and the USACE Wilmington District office by email. OSA and the USACE Wilmington District office shall provide comments on the MS: JN0306 within thirty (30) days of its submittal.

f. Upon approval of the MS: JN0306 by designated OSA reviewer, USACE Wilmington District's Archaeologist, and designated NCDOT Archaeologist, written notice and a copy of the MS will be provided to all Signatories and Consulting Parties. Note that no construction, or construction-related activities, will be allowed within the boundary of Wyse Fork Battlefield until the MS: JN0306 has been approved by the

designated OSA reviewer, USACE Wilmington District’s Archaeologist, and designated NCDOT Archaeologist. Allowable areas for construction-related activities, such as material stockpiling or equipment staging shall be identified as a part of this process.

g. Upon receipt of the approved preliminary fieldwork results detailed in the MS: JN0306, the USACE will notify all the Signatories that the site area has been released for construction with a letter sent to NCDOT (emailed to the Division Two Project Engineer), HPO (emailed to the Environmental Review branch), and ACHP (through the e106 notification process).

3. The analysis and full Data Recovery report preparation, detailing the investigations of Wyse Fork Battlefield, will be completed by NCDOT, or their consultants, within eighteen (18) months after completion of the fieldwork.

a. The full Data Recovery report will conform to the *Secretary of the Interior’s Standards and Guidelines* and OSA’s *Archaeological Investigation Standards and Guidelines (2023)*. Copies of the draft Data Recovery report shall be sent to all the Signatories for review and comment, along with an updated North Carolina Archaeological Site form.

b. The full Data Recovery Report shall be considered final when SHPO (OSA), USACE, and NCDOT agree that the requirements of the WFDRP have been met.

c. Once approved by all Signatories, copies of the final report shall be sent to the USACE and the SHPO for their acceptance.

## **B. Archaeological Curation and Public Outreach/Interaction**

1. Archaeological Curation:

a. Archaeological materials recovered as part of the mitigative field investigations will be prepared for permanent curation at the Office of State Archaeology Research Center (OSARC) in accordance with the OSA’s *Archaeological Investigation Standards and Guidelines (2023)*.

2. Educational Exhibit:

a. A permanent/temporary educational exhibit using artifacts and other materials associated with the Wyse Fork Battlefield may be prepared for display at state historic sites stewarded by the North Carolina Division of State Historic Sites and Properties and other appropriate places in North Carolina.

- i. Such an exhibit may present artifacts collected during the field investigations and may incorporate information/collections provided by private entities.
- ii. Such an exhibit should highlight the timeline of the Undertaking as well as the governmental partnerships and public stakeholders leading to this educational endeavor.
- iii. Such an exhibit could also be transformed into a traveling exhibit, using donated materials that do not have provenience information.
- iv. NCDOT will provide funds not to exceed two hundred thousand dollars (\$200,000) to the SHPO to accomplish this task. Upon full payment to the SHPO, USACE this stipulation will be fulfilled.
- v. Artifacts will be loaned according to OSARC's *Condition for Outgoing Loans*.

**C. Interaction with Known Collectors of Material Culture from Wyse Fork Battlefield:**

1. NCDOT Archaeologists, and/or their qualified consultants working on their behalf, in cooperation with OSA staff will make reasonable efforts to interview known collectors of material culture prior to mitigative field investigations to aid in the proper documentation of any artifacts in the collectors' possession that may be associated with the Battle of Wyse Fork.
  - a. This activity may take the form of a workshop at a local library or even at the CSS Neuse Historic Site.
  - b. NCDOT will provide USACE documentation that the Outreach Workshop has been completed.
  - c. As part of the documentation process, an invitation ("Deed of Gift") will be presented by OSA to private collectors to donate their collections to OSARC for possible display at approved facilities to interpret portions of the collections.

**D. Civil War Trails®**

1. Prior to the acquisition of ROW NCDOT staff will contact the Director of Civil War Trails®. to identify any stops and associated infrastructure that may be affected by the Undertaking.

2. If any stops or infrastructure are affected (either temporarily or permanently) NCDOT staff will work with the Director of Civil War Trails® to reinstall and/or relocate signage where appropriate.

3. The Director of Civil War Trails® has offered their interpretive sign services to the USACE and NCDOT should interpretation be part of the mitigation efforts.

4. NCDOT agrees to provide the Director of Civil War Trails® ninety (90) days' notice in advance of any work which will necessitate the trails signage being temporarily removed and stored in consultation with Civil War Trails® as work on the Undertaking proceeds.

**E. NC Highway Historic Marker # FF-1 at the intersection of US 70 and SR 1821 (British Road) on PIN 4543-09-2781**

1. Prior to the acquisition of ROW NCDOT staff will contact SHPO and the director of North Carolina's Highway Historical Marker program to determine if the marker will be affected by the Undertaking.

2. If access to or location of the marker is affected (either temporarily or permanently) NCDOT staff will work with the SHPO and the coordinator of North Carolina's Highway Historical Marker program ("Marker coordinator") to mitigate those effects to the extent practicable in terms of cost and overall project goals, including paying for and installing a new marker elsewhere along the US 70 corridor to reflect updated locational information in case the marker must be moved from its existing location. Such new location, if said marker must be moved, will be determined in collaboration with the Marker coordinator. NCDOT will provide USACE documentation that any/all resulting mitigative measures have been completed.

**F. Robert Hoke Monument at the intersection of US 70 and SR 1821 (British Road) on PIN 4543-09-2781**

1. The original Robert Hoke Monument was dedicated on May 10, 1920, on the west side of US 70. In 1994 it was relocated approximately .6 miles to the west and rededicated by the C.S.S. Ram Neuse Camp, Sons of Confederate Veterans.

2. Prior to the acquisition of ROW NCDOT staff will contact the current custodian of the monument, the C.S.S. Ram Neuse Camp, Sons of Confederate Veterans, to determine if the monument will be affected by the Undertaking.

3. If access to or location of the monument is affected (either temporarily or permanently) NCDOT staff will work with the C.S.S. Ram Neuse Camp, Sons of Confederate Veterans to mitigate those effects to the extent practicable in terms of



cost and overall project goals. NCDOT will provide USACE documentation that any/all resulting mitigative measures have been completed.

### **G. Kirkland's Attack Monument**

1. This monument was recently erected near the intersection of US 70 and SR 1002 (Wyse Fork Road) on property owned by Lenoir Jones Farms LLC (PIN 454345145200).
2. Prior to the acquisition of Right of Way, NCDOT staff will contact Lenoir Jones Farms LLC, or current parcel owner, to determine if the monument will be affected by the Undertaking.
3. If the monument is affected (either temporarily or permanently) NCDOT staff will work with Lenoir Jones Farms LLC, or current parcel owner, and the SHPO to mitigate those effects. NCDOT will provide documentation regarding monument removal or relocation to the USACE upon completion.

### **H. Story Map**

1. SHPO has experience with producing and maintaining story maps of historic sites and trails and has agreed to produce and host this Story Map about Wyse Fork Battlefield and the changes and threats to the site over time and to prepare a print version available for public distribution.
2. NCDOT will provide funds not to exceed fifty thousand dollars (\$50,000) to the SHPO to accomplish this task. Upon full payment to the SHPO, USACE shall consider this stipulation fulfilled.

### **I. Ethnographic/Oral History**

1. Supplemental histories (ethnographic/oral history) regarding how the African American and American Indian communities were impacted by the Battle of Wyse Fork will be completed.
  - a. Attention will be focused on detailing the African American and American Indian tribal involvement in the battle.
  - b. Such histories may be developed as separate publications, posters, or exhibits.
  - c. NCDOT will provide funds not to exceed one hundred thousand dollars (\$100,000) to the SHPO to accomplish this task. Upon full payment to the SHPO, USACE shall consider this stipulation fulfilled.

## **J. Payment of Funding Educational Outreach and Interaction Activities**

1. Upon ROW authorization of this undertaking, NCDOT shall deliver to the SHPO one half of the funds stipulated for the Educational Exhibit, Story Map, and Ethnographic/Oral History tasks listed above.
2. Upon the start of construction for this undertaking, NCDOT shall deliver the remaining half of the funds to the SHPO.
3. The SHPO shall complete the development of the Educational Exhibit, Story Map, and Ethnographic/Oral History tasks on or before, but no later than the completion of the undertaking.

## **K. Waste, Borrow/Fill Material, and Staging Areas**

### 1. Waste, Borrow/Fill Material:

NCDOT Division Two staff will ensure contractors comply with NCDOT's *Borrow, Waste and Staging Site Reclamation Procedures for Operations* (Appendix A), USACE's *Standard Permit Condition for Borrow and Waste* (Appendix B), and SHPO's standard Environmental Review (ER) procedures (Appendix C) for permitting the use of borrow/fill material associated with this undertaking, to comply with Section 106 of the National Historic Preservation Act (Appendix D).

NCDOT Division Two staff will not approve any borrow and/or waste sites outside of the project limits before receiving written confirmation from USACE that the proposed site meets all Federal requirements.

Due to the sensitivity of the Battle of Wyse Fork resource, the following conditions also apply beyond the procedures stated above. (define project construction limits as being NCDOT ROW and easements)

- a. Outside the limits of project construction: No waste sites or borrow sites will be located anywhere within the NRHP boundary of the Battle of Wyse Fork (Appendix E). Furthermore, no fill material will be temporarily or permanently stored within the NRHP Battle of Wyse Fork boundary. Within all construction contracts for this project, NCDOT, in consultation with SHPO, OSA, and USACE will develop and include language that strictly prohibits waste sites and borrow areas from being located within the boundary of this historic property and outside of the limits of project construction. NCDOT will deny all requests that do not meet the above stipulation, as there will be no exception to this condition.

b. Inside the limits of project construction: NCDOT, in consultation with SHPO, will ensure that all proposed cut and fill areas within the NRHP boundary of the Battle of Wyse Fork have been subject to archaeological field investigation prior to advertisement of the construction project as required in the stipulations of this MOA and were found to not contain intact, significant archaeological deposits. It is agreed through execution of this agreement that the archaeological field investigation will be concluded prior to advertisement of this project. Upon advertisement of this project, NCDOT will make clear to all bidders that the archaeological field investigation has been conducted and there will be no limitations on the contractor for performing any cut and/or fill inside the limits of project construction upon award other than areas identified as Environmentally Sensitive Areas (ESAs) on the plans and/or contract. Any additional Right of Way or Easements due to a plan change, and/or change the scope of the work to be performed, will require additional archaeological field investigation(s).

## 2. Equipment Staging Areas and Heavy Machinery/Vehicle Access:

NCDOT Division Two staff will ensure contractors follow the NCDOT's *Borrow, Waste and Staging Site Reclamation Procedures for Operations* (Appendix A) and SHPO's standard Environmental Review (ER) procedures (Appendix C) for permitting the use of staging areas and heavy machinery/vehicle access associated with this undertaking to comply with Section 106 of the National Historic Preservation Act (Appendix D).

Due to the sensitivity of the Battle of Wyse Fork resource, the following conditions also apply beyond the procedures stated above:

NCDOT Division Two staff will ensure that all proposed equipment staging areas and heavy machinery/vehicle access areas within the NRHP boundary of the Battle of Wyse Fork, outside the limits of project construction, have been subject to archaeological field investigation, as detailed in the stipulations of this MOA, and were found to not contain intact, significant archaeological deposits.

## **L. Billboards**

1. NCDOT Division Two staff will be governed by the provisions of the Outdoor Advertising Control Act of 1967, Article 11, Chapter 136 of the General Statutes of North Carolina for the issuance of permits for Outdoor Advertising signs within the Wyse Fork Battlefield National Register Historic District boundary.

2. NCDOT Division Two staff will be governed by the provisions of Chapter 136 of the North Carolina General Statutes and the North Carolina Administrative Code, 19A NCAC 02E Section .0600 for the issuance of permits for Selective Vegetation Removal (SVR) at Outdoor Advertising signs.

## **M. Safety and Security**

1. Unexploded ordnance may be identified during the archaeological excavations or during the construction phase of the Undertaking.

a. NCDOT's Safety & Risk Management Unit, prior to letting, will develop and provide written guidance on the process to be followed by NCDOT and their contractors in relation to the treatment of unexploded ordnance found within the Undertaking's project limits.

b. Unexploded ordnance as defined in 10 U.S.C. § 101 means military munitions that (a) have been primed, fused, armed, or otherwise prepared for action; (b) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (c) remain unexploded, whether by malfunction, design, or any other cause.

2. A communication plan prior to letting will be prepared by the NCDOT Environmental Analysis Unit's Public Involvement Group, NCDOT Communications Office and Division Two (2), in coordination with the SHPO and the USACE to advise the public of the risks associated with active construction sites and the need to refrain from entering construction sites.

3. NCDOT, or their consultants in cooperation with OSA, will attend the monthly construction progress meetings on a quarterly basis, or as needed, to provide information on the types of items that they may inadvertently recover during construction activities within the NRHP boundaries of Wyse Fork Battlefield

a. The first meeting will occur thirty (30) days prior to the initiation of construction activities within the NRHP boundaries of Wyse Fork Battlefield.

b. The meetings will then be held until construction of the portion of the undertaking within the NRHP boundaries of Wyse Fork Battlefield is complete.

## **IV. Archaeological Site (31LR472)**

### **A. Archeological Research/Field Methodology**

1. NCDOT will develop a Data Recovery Plan for the portions of Site 31LR472 (herein "31LR472 DRP") which will be affected by the undertaking, in consultation with the SHPO, the Catawba Indian Nation, the Tuscarora Nation, and the USACE.

a. NCDOT will ensure that the 31LR472 DRP will be implemented after ROW is acquired and prior to construction activities within the site's location as shown in the 31LF472 DRP.

2. Subsequent to completion of the 31LR472 DRP fieldwork and prior to the start of construction, NCDOT will ensure that a Management Summary (MS): 31LR472 is prepared that contains summarized descriptions of the size, extent, and results of the excavations and field samples/studies undertaken for completion of the Data Recovery fieldwork.

a. MS: 31LR472 will include a discussion of the nature and number of features identified and excavated, the nature of the artifacts, and other data recovered, in both qualitative and general quantitative terms. The document will include tabular, graphic, map, and other data as appropriate to illustrate the extent of field excavations.

b. MS: 31LR472 will also present additional analysis or research to be conducted and incorporated into the draft Data Recovery Report.

c. The information presented in MS: 31LR472 should be sufficient to allow all Signatories to assess whether the fieldwork requirements of the 31LR472 DRP have been met and provide a preliminary summary of the nature of the results.

d. MS: 31LR472 will be reviewed and approved by a NCDOT Archaeologist who meets the *Secretary of the Interior's Standards and Guidelines: Archeology and Historic Preservation Professional Qualifications Standards*, to ensure compliance with the approved Data Recovery Plan.

e. Upon approval of MS: 31LR472 by the NCDOT Archaeologist, a copy of MS: 31LR472 will be submitted electronically by NCDOT to OSA through the Environmental Review branch in HPO and the USACE Wilmington District office by email. OSA and the USACE Wilmington District office shall provide comments on the MS: JN0306 within thirty (30) days of its submittal. In addition, MA: 31LR472 will be provided to the Catawba Indian Nation and the Tuscarora Nation for their comments.

f. No construction, or construction-related activities, such as material stockpiling or equipment staging, will be allowed within the boundary of 31LR472 until the MS: 31LR472 has been approved by NCDOT, SHPO, the Catawba Indian Nation, the Tuscarora Nation, and the USACE.

g. Upon receipt of the approved preliminary fieldwork results detailed in MS: 31LR472, the USACE will notify all the Signatories that the site area

has been released for construction with a letter sent to NCDOT (emailed to the Division Two Project Engineer), HPO (emailed to the Environmental Review branch), and ACHP (through the e106 notification process).

3. The analysis and full Data Recovery report preparation, detailing the investigations of 31LR472, will be completed by NCDOT, or their consultants, within eighteen (18) months after completion of the fieldwork.

a. The Data Recovery investigations will be documented in an archaeological report, (separate from that generated for Wyse Fork Battlefield (JN0306)), conforming to the *Secretary of the Interior's Standards and Guidelines* and OSA's *Archaeological Investigation Standards and Guidelines (2023)*. Copies of the draft Data Recovery report shall be sent to all Signatories, the Catawba Indian Nation, and the Tuscarora Nation for review and comment, along with an updated North Carolina Archaeological Site form.

b. The full Data Recovery Report shall be considered final when approved by SHPO (OSA), USACE, NCDOT, the Catawba Indian Nation, and the Tuscarora Nation agree that the requirements of the 31LR472 DRP have been met. Copies of the final report shall be sent to the USACE and the SHPO for their administrative record.

## **V. R-2553 US 70 Kinston Bypass Plan for Treatment of Discovered, Unmarked Burials**

A. NCDOT will ensure that plans for conducting further archaeological assessments and investigations within the APE and as well as subsequent construction phases of the Undertaking will adhere to the process detailed in *R-2553 US 70 Kinston Bypass Plan for Treatment of Discovered, Unmarked Burials* included in the Appendix.

1. For the purposes of this treatment plan, the term “discovered” incorporates multiple methodologies (including but not limited to ground penetrating radar (GPR), shovel tests, hand excavation, laboratory analysis, and construction activities) used to assist with identifying potential graves or unmarked human burials that may or may not require disinterment or excavation and can occur at any point during the time span of this undertaking.

## **VI. Unanticipated Discovery**

In accordance with 36 C.F.R. § 800.13(b), if NCDOT identifies additional cultural resource(s) during construction, all work will be halted within twenty-five (25) feet of the discovered resource(s) and the USACE will be contacted. The USACE will initiate the appropriate agency and/or Tribal coordination required for a determination of eligibility or

recovery effort. NCDOT will take all reasonable measures to avoid, minimize harm, and protect the discovery until further consultation with the SHPO and any other consulting parties has concluded. If after consultation between the Signatories and Consulting Parties, additional mitigation is determined necessary, the NCDOT, in consultation with the Signatories and Consulting 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 as well as *R-2553 US 70 Kinston Bypass Plan for Treatment of Discovered, Unmarked Burials* included in the Appendix.

## **VII. Amendments**

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 the proposed amendment is signed by all the Signatories..

## **VIII. Dispute Resolution**

A. Should any of the Signatories or Consulting Parties to this MOA object within (30) days to any plans or documentation provided for review pursuant to this MOA or the manner in which the terms of this MOA are implemented, the USACE shall consult with the objecting party(ies) to resolve the objection. If the USACE determines that the objection cannot be resolved, the USACE will forward all documentation relevant to the dispute to the ACHP.

B. Within thirty (30) days after receipt of adequate documentation, the ACHP shall provide the USACE with its advice on the resolution of the objection.

C. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the signatories, and other consulting parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.

D. The USACE's responsibilities to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

## **IX. Termination**

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by all Signatories) an amendment cannot be reached, any Signatory may terminate the MOA by providing written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the USACE must either (a) execute an MOA with the Signatories under 36 CFR § 800.6(c)(1) or

request the comments of the Council under 36 CFR § 800.7(a). The USACE shall notify the Signatories as to the course of action it will pursue.

## **X. Duration**

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

## **XI. Execution of Agreement in Counterparts**

This MOA may be executed in counterparts with a separate page for each signatory. The USACE will ensure that each party is provided with a copy of the fully executed agreement.

## **XII. Other Federal Agencies**

In the event that another federal agency not initially a party to or subject to this MOA receives an application for funding/license/permit for the Undertaking as described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this MOA and notifying the USACE, SHPO, NCDOT, and the ACHP that it intends to do so.

**Execution of this MOA by the USACE, NCDOT, the North Carolina SHPO, and the ACHP and implementation of its terms evidence that the USACE has taken into account the effect of the Undertaking on the historic properties and has afforded the ACHP an opportunity to comment.**



**MEMORANDUM OF AGREEMENT  
AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR  
KINSTON BYPASS (US 70 FROM LAGRANGE TO DOVER)  
IN LENOIR, JONES, AND CRAVEN COUNTIES, NORTH CAROLINA  
USACE AID No. SAW-2009-01603  
STIP No. R-2553      WBS No. 34460**

**United States Army Corps of Engineers:**

FOR THE COMMANDER

\_\_\_\_\_  
Tommy Fennel  
Chief, Regulatory Division  
Wilmington District

Date: \_\_\_\_\_

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AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
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**State Historic Preservation Officer:**

\_\_\_\_\_

Darin Waters, Ph.D.

Deputy Secretary North Carolina Department of Natural and Cultural Resources

Date: \_\_\_\_\_

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**North Carolina Department of Transportation:**

\_\_\_\_\_  
Jamie Lancaster, P.E.  
Environmental Analysis Unit Head

Date: \_\_\_\_\_

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**ADVISORY COUNCIL ON HISTORIC PRESERVATION:**

\_\_\_\_\_  
Reid Nelson  
Executive Director

Date: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
AMONG THE U.S. ARMY CORPS OF ENGINEERS,  
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**CONCUR:**

\_\_\_\_\_ Date: \_\_\_\_\_  
NAME  
Title

# **Appendix A: Borrow, Waste and Staging Site Reclamation Plan Procedures for Operations**

# **Appendix B: USACE's Permit Condition for Borrow and Waste**

# **Appendix C: SHPO's Environmental Review (ER) procedures**



# **Appendix D: Section 106 of the National Historic Preservation Act**

# **Appendix E: Wyse Fork Battlefield Nomination Verbal Description and Mapping**