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| Logo  Description automatically generated | **Planning and Engineering**  **Environmental Office**  700 E Broadway Avenue  Pierre, SD 57501-2586  O: 605.773.4336  dot.sd.gov |

Month ##, 20##

Tom Lehmkuhl, Environmental Engineer

Federal Highway Administration

South Dakota Division

116 East Dakota Avenue, Suite A

Pierre, SD 57501

**Subject: Section 4(f) Exception for Archeological Sites That Are On or Eligible for the National Register [23 CFR 774.13(b)]**

**RE: Project #, PCN ####, \_\_\_\_\_ County**

Location

Work Description

Dear Mr. Lehmkuhl:

This letter requests FHWA approval of a Section 4(f) exception for archeological sites that are on or eligible for the National Register [23 CFR 774.13(b)] associated with the proposed (describe project). The Project’s compliance with the National Environmental Policy Act will be documented as a Categorical Exclusion. Included as an attachment is the approved scope detailing the project location and extent. The (insert property name and archaeological site number), a property which is eligible for inclusion in the National Register of Historic Places, is located (describe property location within project area). I have attached a map showing the work area and the Section 4(f) property.

Due to the use of federal funds, the proposed transportation project is subject to the requirements of Section 4(f) of the Department of Transportation (DOT) Act of 1966, which affords protection to publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic properties.

A ‘Use’ of Section 4(f) property occurs when:

1. Land is permanently incorporated into a transportation facility;
2. There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute’s preservationist purposes; or
3. There is a constructive use of a Section 4(f) property.

In accordance with 23 CFR 774.13(b), archeological sites that are on or eligible for the National Register qualify as an exception to Section 4(f), when:

1. The Administration concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration decides, with agreement of the official(s) with jurisdiction, not to recover the resource; and
2. The official(s) with jurisdiction over the Section 4(f) resource have been consulted and have not objected to the Administration’s finding.

During Section 106 coordination efforts, SDDOT, on behalf of FHWA, determined that (insert SDDOT project number and PCN) will have an Adverse Effect on historic properties, based upon impacts to the (insert name and archaeological site number). SHPO concurred with this determination on (insert date). (Describe the resource and impacts the project will have to the resource in 2-3 sentences). Efforts to reduce the impact to this resource have resulted in the (describe avoidance and minimization measures).

A Memorandum of Agreement is being prepared to take into account and mitigate the effect of the undertaking on the (insert name and archaeological site number). The MOA is still in draft form but is anticipated to include mitigation measures that will (describe mitigation measures stipulated by the MOA). Based on this minimization of impact described above, SDDOT and FHWA have determined that the portion of (insert name and archaeological site number) being impacted by the project has minimal value for preservation in place and the resource is important chiefly because of what can be learned through mitigation/data recovery efforts. The ensuing MOA resulting from Section 106 effect resolution will stipulate the nature and extent of mitigation efforts associated with this resource.

The SHPO, who serves as the Official with Jurisdiction, has been consulted about the application of this 4(f) Exception (b) and provided no objections (see attached letter). I am requesting FHWA’s concurrence that 23 CFR 774.113(b) exception applies for this project. If you have questions and/or concerns, please feel free to contact me.

Sincerely,

Name

Title

605.773.####

Email Address

Attachments:

Approved Scope

4(f) Resource Map

OWJ Letter

**Project #, PCN ####, \_\_\_\_\_ County**

**SHPO Project: (insert SHPO Project Review Number)**

The FHWA, SD Division has reviewed the information as described in this document and concurs that the work associated with this project at this Section 4(f) resource meets the criteria set forth in 23 CFR 774.13(b), and therefore exempt from Section 4(f) regulations.

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Tom Lehmkuhl Date

South Dakota Division

Federal Highway Administration