

Enclosure D
Executed 2010 Statewide Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
AND THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
REGARDING IMPLEMENTATION OF THE FEDERAL AID HIGHWAY
PROGRAM IN PENNSYLVANIA**

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal-Aid Highway Program in Pennsylvania authorized by 23 U.S.C. § 101 et seq., through the Pennsylvania Department of Transportation (PennDOT) (23 U.S.C. § 315); and

WHEREAS, the FHWA has determined that the Federal-Aid Highway Program may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places, and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Pennsylvania State Historic Preservation Officer (SHPO) pursuant to 36 CFR § 800.14(b) of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f); and

WHEREAS, cooperating Federal agencies that recognize FHWA as the lead agency for an undertaking may fulfill their obligations under Section 106 of the NHPA according to 36 CFR 800.2(a)(2), provided that FHWA and PennDOT follow the requirements of this Programmatic Agreement (PA) and the cooperating Federal agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and PennDOT; and

WHEREAS, the FHWA recognizes that it has a unique legal relationship with Indian tribes (Tribes and Nations) set forth in the Constitution of the United States, treaties, statutes, and court decisions, and, therefore, consultation with an Indian tribe must recognize the government-to-government relationship between the federal government and tribes; and

WHEREAS, in the development of this PA the FHWA has consulted with the following Federally recognized Tribes and Nations with ancestral ties to Pennsylvania that may attach religious or cultural significance to properties in Pennsylvania: the Absentee-Shawnee Tribe of Oklahoma, the Cayuga Nation, the Delaware Nation, the Eastern Shawnee Tribe of Oklahoma, the Oneida Indian Nation, the Oneida Tribe of Indians of Wisconsin, the Onondaga Indian Nation, the Seneca Nation of Indians, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Mohawk Tribe, the Shawnee Tribe of Oklahoma, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Seneca Nation, and the Tuscarora Nation; and

WHEREAS, the FHWA has invited other parties to participate in the development of this PA pursuant to 36 CFR § 800.2 (a)(2), namely the Society for Pennsylvania Archaeology, the Pennsylvania Archaeological Council, Preservation Pennsylvania, the Pennsylvania Federation

of Museums and Historical Organizations, the Keystone Contractors Association, and the Pennsylvania Turnpike Commission; and

WHEREAS, PennDOT, the Seneca Nation of Indians, the Tonawanda Band of Seneca Indians, the Pennsylvania Archaeological Council, Preservation Pennsylvania, and the Society for Pennsylvania Archaeology have agreed to concur in this PA; and

WHEREAS, 36 CFR 800 encourages Federal agencies to fulfill their obligations efficiently under Section 106 of the NHPA through the development and implementation of cooperative Programmatic Agreements; and

WHEREAS, PennDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (36 CFR 61) in the fields of archaeology and architectural history, or related fields; and

WHEREAS the ACHP, FHWA, SHPO, and PennDOT agree that effective and efficient consultation is in the public interest and seek to 1) develop a comprehensive, transparent, and efficient process for all Section 106 undertakings, 2) integrate project reviews under Federal historic preservation and environmental laws, 3) simplify procedural requirements to the maximum extent possible, and 4) reduce paperwork; and

WHEREAS, in the spirit of stewardship, the FHWA and PennDOT are committed to the design of transportation projects that 1) avoid, minimize and mitigate adverse effects to historic and archaeological properties, 2) utilize context sensitive solutions in appropriate settings, and 3) balance transportation needs with other needs of Pennsylvania communities; and

WHEREAS, the FHWA, SHPO and PennDOT support long term planning that considers preservation of historic properties and these agencies reasonably participate in the 1) development of historic contexts; 2) development of bridge management plans; 3) engagement in partnership in the continued upgrade and maintenance of the cultural resources GIS (CRGIS), and 4) continued development of innovative programs to address historic preservation issues; and

WHEREAS, the *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Implementation of Minor Transportation Projects* (1996) in Pennsylvania is superseded by this PA; and

WHEREAS, the following Programmatic Agreements are still in effect and are separate from this PA: *Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, the Delaware Nation and the City of Philadelphia Regarding Implementation of Minor Transportation Improvement Projects in the City of Philadelphia* and, *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Emergency Relief Program*;

NOW, THEREFORE, the ACHP, FHWA, SHPO, and PennDOT agree that the Federal-Aid Highway Program shall be administered in accordance with the following stipulations to satisfy FHWA's Section 106 responsibilities.

Stipulations

FHWA shall ensure that the following measures are carried out:

I. Applicability and Scope

- A. This PA sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of PennDOT, for transportation projects under the Federal-Aid Highway Program.
- B. This PA applies to any project under the Federal-Aid Highway Program including Transportation Enhancements (TE) projects. The purpose of this PA is to delegate certain aspects of Section 106 review to PennDOT and to establish the process by which the FHWA, ACHP, SHPO, PennDOT, and any consulting parties will be involved in such review.
- C. If, for any undertaking, the U. S. Army Corps of Engineers (USACE) should become the lead federal agency under Section 106 because of project funding changes from Federal-Aid to State funding with a USACE Section 404 Permit under the Clean Water Act (33 U.S.C. § 1344) or a Section 10 permit under the River and Harbors Act of 1899 (33 U.S.C. § 403 et seq.), USACE shall be responsible for compliance with Section 106 of the NHPA. To the extent that the USACE deems applicable, the USACE may use studies, findings and determinations previously completed by PennDOT to document its own findings.
- D. Any other designated lead federal agency may use PennDOT studies to support their findings and determinations under Section 106 of the NHPA.

II. Responsibilities and General Requirements

- A. In compliance with its responsibilities under the NHPA and as a condition of their award of any assistance under the Federal-Aid Highway Program, FHWA will require PennDOT to carry out the requirements of this PA. This authorization does not preclude FHWA's right to take the lead in consultation among PennDOT, the SHPO and other consulting parties; or to consult with federally recognized Indian tribes (Tribes & Nations) on a government-to-government basis. When FHWA takes the lead, it may either carry out consultation in accordance with the procedures of this PA or follow the procedures in 36 CFR 800.3-800.6. If PennDOT cannot comply with

the requirements of this PA for any undertaking under the Federal-Aid Highway Program, FHWA shall comply with 36 CFR 800.

B. PennDOT shall employ professionally qualified personnel sufficient to implement this PA. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are Pennsylvania State Employees and will meet the Secretary of the Interior's Standards for Professional Qualifications (36 CFR 61) in the fields of archaeology or architectural history. Use of consultants will be guided by Stipulation III.D.

C. Tribal Consultation

- 1) Before the stipulations of this PA may be implemented, FHWA shall send a letter similar to that in Appendix A to the following Tribes and Nations: the Absentee-Shawnee Tribe of Oklahoma, the Cayuga Nation, the Delaware Nation, the Delaware Tribe of Indians, Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Oneida Indian Nation, the Oneida Tribe of Indians of Wisconsin, the Onondaga Indian Nation, the Seneca Nation of Indians, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Mohawk Tribe, the Shawnee Tribe of Oklahoma, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Seneca Nation, and the Tuscarora Nation. These letters will be individually addressed to the tribal leaders of the listed tribes.
- 2) Every other year after this PA goes into effect, FHWA shall send a letter similar to that in Appendix A to the Tribes and Nations identified in Stipulation II.C.1 above.
- 3) PennDOT may, on behalf of FHWA, initiate consultation with Tribes and Nations for individual undertakings carried out under the provisions of this PA. PennDOT and FHWA shall ensure that Tribes and Nations are provided information regarding proposed undertakings early in project planning and are invited to participate in consultation in accordance with the requirements of Section 101(d)(6) of the NHPA and 36 CFR Part 800. In consulting with Tribes and Nations, PennDOT shall follow the procedures in its *Tribal Consultation Handbook* (Publication 591) and, for those Tribes and Nations that have signed an individual Memorandum of Understanding (MOU) with FHWA, the provisions of the MOU. However, upon receipt of a written request from any Tribe or Nation, or officially designated representative of a Tribe or Nation, to consult with FHWA in lieu of PennDOT, FHWA shall consult with that Tribe or Nation for the particular undertaking or program.

- D. FHWA authorizes PennDOT to consult with the SHPO and other consulting parties on their behalf for the following:
- 1) establish whether there is an undertaking with the potential to affect historic properties,
 - 2) solicit and identify consulting parties,
 - 3) conduct public involvement activities,
 - 4) establish the Area of Potential Effect (APE),
 - 5) determine the National Register eligibility of properties within the APE,
 - 6) determine effect, and
 - 7) initiate consultation on the resolution of adverse effects.
- E. PennDOT, in consultation with FHWA, ACHP, and the SHPO, will develop a handbook containing guidance on how to implement this PA. The *Cultural Resources Handbook* must be completed and approved by FHWA prior to implementation of this PA. A table of contents for the handbook is included in Appendix D. The handbook will be made publicly available. PennDOT will ensure that their staff and consultants act consistent with the procedures contained therein.
- F. PennDOT, with the assistance of FHWA and the SHPO, will provide training for PennDOT personnel and their consultants relative to implementation of this PA, as specified in Appendix B. PennDOT Personnel responsible for review under Stipulation III will receive such training prior to implementing activities under Stipulation III.
- G. For projects funded under the Transportation Enhancements (TE) Program, and when an agreement is in place between PennDOT and the SHPO, the FHWA may delegate certain Section 106 activities to the SHPO. These activities will be mutually agreed upon between FHWA, PennDOT, and the SHPO, and will be specified in a separate agreement. In the absence of such an agreement, the FHWA, SHPO, and PennDOT will follow the requirements in Stipulation III.
- H. The current Historic Bridge Inventory and Evaluation will provide individual determinations of eligibility for bridges 20 ft. and greater. With the exception of covered bridges, stone arch bridges, and closed spandrel concrete arch bridges, all other bridges or culverts less than 20 ft. in length are considered not individually eligible for the National Register.
- I. PennDOT and FHWA will collaborate with the SHPO to continue the development of the Agricultural Context, the CRGIS, and bridge management plans, and to develop new projects or programs of mutual interest that facilitate historic preservation planning. These may include but are not limited to 1) historic contexts, 2) data syntheses, 3) development of management plans, 4) development of predictive models, and 5) electronic data exchange.

III. Project Review Responsibilities

Notwithstanding Stipulation II.G above, PennDOT, FHWA, and the SHPO will observe the following requirements for all projects covered under this PA.

A. Review by PennDOT District Designees

The types of projects listed in Appendix C, Section 2.A have little or no potential to affect historic properties and may be reviewed by PennDOT District staff (PennDOT Designees), provided the projects are limited to the activities specified and are not part of a larger undertaking. PennDOT Designees shall receive training (Appendix B) prior to review of activities defined in Appendix C.

- 1) The PennDOT Designee will exercise his/her best judgment that the conditions in Appendix C are being met, and will document that no further review is necessary under Section 106. The PennDOT Designee may consult with the PennDOT CRPs in reaching a decision. The PennDOT Designee will document his/her decision in the CE Expert system, as part of the appropriate National Environmental Policy Act (NEPA) documentation.
- 2) On a quarterly basis, PennDOT will prepare an electronic report of projects reviewed by the Designees that meet the conditions in Appendix C. For each project included in the report, the county, project name, and the specific project type in Appendix C that applies will be provided. Map locations of each project will be included. The report will be made available to the FHWA, SHPO, and the public.

B. Review by PennDOT Cultural Resource Professionals

In the absence of a District Designee, or at the request of a District Designee, PennDOT CRPs may review projects listed in Appendix C, Section 2.A. The CRPs will review the projects in Appendix C, Section 2.B. Those projects that meet the conditions specified in Appendix C may be exempted from further review under Section 106. The CRP will document his/her decision in the CE Expert system as part of the appropriate NEPA documentation.

For projects that do not meet the conditions of Stipulation III.A and Appendix C, the PennDOT CRPs, who meet the Secretary of Interior professional qualifications under 36 CFR 61, will be responsible for carrying out the following requirements.

1) *Early Notification*

Prior to making a finding of effect for an undertaking, the PennDOT CRP will provide the SHPO with an Early Notification for those projects that may have effects on historic properties. The Early Notification will include a brief project description and a map location.

2) *Consulting Parties*

In consultation with the SHPO, and pursuant to 36 CFR 800.2(c), PennDOT CRPs will identify consulting parties and invite them to participate in the Section 106 process. PennDOT shall also seek and consider the views of consulting parties. Consulting parties may include local governments, owners of property affected by the undertaking, or other individuals or organizations with a demonstrated interest in the undertaking.

3) *Tribal Consultation*

PennDOT CRPs will initiate consultation with appropriate federally recognized Tribes and Nations following the procedures in PennDOT's *Tribal Consultation Handbook* (Publication 591). For those Tribes or Nations that have signed an individual Memorandum of Understanding (MOU) with FHWA, the provisions of the MOU will be followed.

4) *Involving the Public*

Consistent with current state and federal laws and regulations and PennDOT policy, including the Public Involvement Handbook (Publication 295), FHWA and the PennDOT CRPs shall, through the opportunities afforded by the PennDOT project development process, seek and consider the views of the public, including municipalities and other interest groups. Public outreach will be conducted in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, the confidentiality and concerns of property owners, who are either private individuals and/or businesses, and the relationship of the federal involvement to the undertaking.

5) *Area of Potential Effect*

PennDOT CRPs will define the undertaking's area of potential effect (APE) as defined in 36 CFR 800.16(d). The APE will initially be established during project field scoping. As the project develops, the APE will be adjusted, as necessary. The APE will be documented per Stipulation IV of the PA and the *Cultural Resources Handbook*.

- a) As a streamlining measure, PennDOT may combine consultation with the SHPO on the APE with consultation on determinations of eligibility and/or effect for projects classified as Categorical Exclusions (CE) and Environmental Assessments (EA) under NEPA.
- b) For projects requiring the preparation of an Environmental Impact Statement (EIS) under NEPA and the provisions of federal transportation legislation, the PennDOT CRP will consult with the SHPO on the APE

early in project development prior to a determination of eligibility or effect.

6) *Determine the Appropriate Level of Identification*

- a) Based upon the best available background information gathered via a literature search, including but not limited to the SHPO's Cultural Resources GIS (CRGIS), PennDOT's Historic Bridge Inventory, and a project scoping field view, the PennDOT CRP shall assess the likelihood that as yet unidentified historic properties exist within the APE. The PennDOT CRP will make a determination as to the need for further field survey to identify historic properties. In making such a determination and consistent with 36 CFR 800.4(b)(1), the CRP will take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE. PennDOT will also seek information from consulting parties, as appropriate.
- b) When the PennDOT CRP determines that a field survey is necessary to identify historic properties, the CRP shall conduct, or cause to be conducted, a survey to identify historic properties. Such surveys will be conducted in a manner consistent with the *Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23)*, and, where appropriate, applicable SHPO guidelines, and the approved PennDOT *Cultural Resources Handbook* developed to implement this PA.
- c) Pursuant to 36 CFR 800.4(b)(2) and in consultation with the SHPO, Tribes and Nations, and other consulting parties, PennDOT may use a phased process to identify and evaluate historic properties. A phased process will be limited to the following conditions:
 - large or complex projects where multiple alternatives are under consideration; or
 - when access to property is restricted; or
 - when the APE is not known until later in project development for the locations of items typically included as part of final design and permitting, such as bridge piers, storm water detention facilities, or wetland mitigation sites.

In such cases, PennDOT will prepare, or cause to be prepared, a reconnaissance or windshield survey, and/or an archaeological predictive model or archaeological sensitivity study, as appropriate. Reconnaissance or windshield surveys, archaeological predictive models or sensitivity studies will establish the likely presence of historic properties within each alternative under consideration or within each inaccessible area, and will

be documented in accordance with Stipulation IV and the *Cultural Resources Handbook*. Once an alternative has been selected or access to property is gained, PennDOT shall comply with Stipulations III.B.5.b, and III.B.6-9 of this PA, as appropriate.

7) *Determination of Eligibility*

- a) When PennDOT CRPs identify properties that may be eligible for the National Register of Historic Places, the CRPs will apply the National Register criteria following National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation* and the *Secretary of Interior's Standards and Guidelines for Evaluation* (48 FR 44723-26). The PennDOT CRPs may consult with the SHPO and FHWA in making a determination of eligibility. The PennDOT CRPs will consult with Tribes and Nations that may attach religious and cultural significance to properties in the APE, in accordance with the *Tribal Consultation Handbook* and Tribal agreements. PennDOT will also seek information from consulting parties, as appropriate. Where eligible or listed historic properties have previously been identified but boundaries have not been established, the CRPs may identify recommended boundaries following the guidance in National Register Bulletin 21, *Defining Boundaries for National Register Properties*. Due to the passage of time, the CRPs may also reevaluate properties.
- b) PennDOT CRPs will prepare documentation according to Stipulation IV and the *Cultural Resources Handbook*. For undertakings that will not affect historic properties, consultation with the SHPO on determinations of eligibility is not required. However, PennDOT will seek and consider the views of any Tribe or Nation that ascribes traditional cultural and religious significance to a property. The documentation will be made available to the SHPO, Tribes and Nations, consulting parties, and the public. For undertakings that may have an effect on historic properties, PennDOT CRPs shall consult with the SHPO and any Tribe or Nation that ascribes traditional cultural and religious significance to a potential historic property on determinations of eligibility when any of the conditions under III.B.9.b apply or when III.B.10 applies. This consultation may be completed as a separate step or combined with the finding of effect. The documentation will be provided to the Tribes and Nations, consulting parties, and made available to the public.

8) *No Historic Properties Affected*

If the PennDOT CRPs determine that either there are no historic properties within the APE, or historic properties are present but will not be affected by the undertaking, the PennDOT CRPs shall issue a finding of No Historic Properties Affected. The PennDOT CRPs will document their finding

according to Stipulation IV and the *Cultural Resources Handbook* and will notify the SHPO, FHWA, Tribes and Nations, and other consulting parties that a finding has been made, and make the documentation available for public inspection prior to approving the undertaking. Except when dispute resolution in Stipulation XI is invoked, PennDOT may consider Section 106 concluded.

9) *No Adverse Effect*

- a) For those undertakings where historic properties may be affected, the PennDOT CRPs shall apply the Criteria of Adverse Effect in accordance with 36 CFR 800.5. If the effect of the undertaking will not be adverse, the PennDOT CRPs will propose a finding of No Adverse Effect and will document their finding according to Stipulation IV and the *Cultural Resources Handbook*. PennDOT shall seek and consider the views of the Tribes and Nations, and other consulting parties, and will make its finding available for inspection by the public. If a Tribe or Nation, a consulting party, or member of the public objects to the finding within 30 days, the dispute resolution process in Stipulation XI will be applied. Except when dispute resolution in Stipulation XI is applied, PennDOT may consider Section 106 concluded.
- b) Under the following conditions the PennDOT CRP will request the concurrence of the SHPO on findings of No Adverse Effect:
 - i) Rehabilitation projects where the finding of No Adverse Effect is based on the proposed work being consistent with Secretary of Interior's Standards for rehabilitation,
 - ii) When there is public controversy on historic preservation issues,
 - iii) At the request of the CRP,
 - iv) When a consulting party, FHWA, a Tribe or Nation requests the SHPO's concurrence.

PennDOT shall submit the finding to the SHPO. If the SHPO fails to concur with an adequately documented finding of No Adverse Effect within the review time specified in Stipulation III.C, the dispute resolution process in Stipulation XI will be applied. Except when dispute resolution in Stipulation XI is applied, PennDOT may consider Section 106 concluded.

10) *Adverse Effect*

- a) If the PennDOT CRPs determine that the undertaking will have an adverse

effect on historic properties, PennDOT will issue a finding of Adverse Effect and will document the finding according to Stipulation IV and the *Cultural Resources Handbook*. PennDOT CRPs will consult with the SHPO, FHWA, Tribes and Nations, and any other consulting parties, to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects. These parties will have 30 days to provide comment.

- b) If, after consultation, PennDOT determines that adverse effects cannot be avoided, PennDOT will consult with the FHWA, SHPO, Tribes and Nations, and other consulting parties, as appropriate, to resolve the adverse effect. FHWA will notify the ACHP of an Adverse Effect determination and invite its participation under any of the following conditions:

- i) When the undertaking will adversely affect a National Historic Landmark,
- ii) When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties,
- iii) When PennDOT, the SHPO, and FHWA are not able to reach agreement on the resolution of adverse effects.

- c) Resolution with a Letter of Agreement

If the FHWA, SHPO, and PennDOT agree to measures to resolve adverse effects, and other consulting parties, including Tribes and Nations do not object to the proposed resolution, PennDOT may prepare and execute a Letter of Agreement. Letters of Agreement prepared under this stipulation will be consistent with the sample provided in Appendix E. The execution of a Letter of Agreement and implementation of its terms will document FHWA's compliance with Section 106 of the NHPA for that undertaking. The Letter of Agreement shall be signed by the authorized representatives of the FHWA. SHPO, PennDOT and other concurring parties and approved as to legality and form by PennDOT's Office of Chief Counsel.

- d) Resolution with a Memorandum of Agreement

FHWA shall carry out the requirements of 36 CFR 800.6 to complete the Section 106 process for resolving adverse effects in the following circumstances:

- i) When one of the potential signatories to the Letter of Agreement was not signatory to this PA,

ii) If a proposed mitigation commitment is not on the list of potential commitments in the Letter of Agreement in Appendix E,

iii) If a consulting party objects to the proposed resolution of adverse effects.

C. Review by SHPO

- 1) The SHPO will have 30 days to respond to any request for review made by PennDOT under Stipulations III.B.5.b, III.B.7.b, and III.B.9.b, unless the following Stipulations III.C.2 or III.C.3 apply.
- 2) The review times specified in any FHWA/PennDOT/SHPO interagency funding agreement will supercede III.C.1 above.
- 3) Provided that consulting Tribes, other consulting parties and the public have an adequate opportunity to express their views as provided in 36 CFR 800.2(d) of the regulations, PennDOT may request an expedited review by the SHPO. PennDOT and the SHPO will negotiate a review time that is mutually agreeable.

D. Use of Consultants in Project Review

- 1) Consistent with 36 CFR 800.2(a)(3), PennDOT may use consultants to gather information, analyze data, and prepare documentation. PennDOT, or FHWA, where applicable, will be responsible for all findings and determinations made under this PA.
- 2) Consultant staff meeting Secretary of the Interior's Standards for Professional Qualification (36 CFR 61) may be qualified to assume the role of PennDOT CRP by written approval from FHWA and PennDOT Cultural Resources Section Chief, and upon completion of the training specified in Appendix B.
- 3) Consultant staff may assume the role of a PennDOT CRP in a temporary capacity (defined as less than two years) only in the following circumstances: temporary vacancies of permanent staff; temporary fluctuations in workload; or, temporary specialized expertise that cannot be found within existing permanent staff.
- 4) Consultant staff may constitute no more than 25% of PennDOT cultural resource staff at any one time as defined under this Agreement. Exceptions to this provision will be handled under Section X.E of this Agreement.

IV. Documentation

With the exception of projects covered under Stipulation III.A and Appendix C, all findings and determinations made under this PA will be documented in accordance with 36 CFR 800.11 and

consistent with the *Cultural Resources Handbook* developed to implement this PA. The level of documentation will be determined by the nature and complexity of the undertaking and magnitude of effects to historic properties.

A. Confidentiality

Consistent with Section 304 of the NHPA and 36 CFR 800.11(c), PennDOT will ensure that PennDOT, and any consultants assigned to act on behalf of PennDOT, will not disclose to the public any information on the location, character, or ownership of historic properties when such disclosure may cause a significant invasion of privacy, risk harm to the historic property, or impede the use of a traditional religious site by practitioners.

V. Standard Treatments

PennDOT, in consultation with FHWA, the SHPO, ACHP and consulting parties, may develop standard treatments for certain types of historic properties that would be affected by projects reviewed under this PA. Once FHWA, SHPO and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix F and the *Cultural Resources Handbook* and may implement it, as appropriate, to resolve adverse effects. If a standard treatment is the sole measure to resolve adverse effects, no Memorandum of Agreement or Letter of Agreement is needed. When the standard treatment would apply to properties of traditional cultural and religious significance to Indian Tribes or Nations, PennDOT shall consult with appropriate Tribe or Nation in developing the standard treatment. A list of standard treatments in effect is found in Appendix F.

VI. Treatment of Human Remains

If human remains, graves, or grave-associated artifacts are encountered during any archaeological investigations conducted under this PA, or during project construction, all work shall cease in the area of the encounter and PennDOT will ensure that the remains, graves, or grave-associated artifacts are secured and protected. PennDOT will immediately notify the FHWA. FHWA and/or PennDOT will concurrently notify the SHPO and any federally recognized tribes that may attach religious or cultural significance to the affected property. For those Tribes and Nations that have signed an individual Memorandum of Understanding (MOU) with FHWA, the provisions of the MOU will be followed. If historic burials or cemeteries are encountered, PennDOT will follow procedures consistent with Pennsylvania State Law Title 9 P.S. § 41-47. PennDOT will also take into account guidance in the National Register Bulletin 41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places*, and the 1993 Pennsylvania Historical and Museum Commission (PHMC) *Policy for the Treatment of Burials and Human Remains*. For human remains discovered or potentially affected on Federal lands, PennDOT will notify the federal land managing agency. No activities which might disturb or damage the remains, graves, or grave-associated artifacts, will be conducted until the FHWA, in consultation with consulting parties and other appropriate parties, has determined an appropriate

course of action. When Native American graves are discovered under this provision, FHWA will consult with the appropriate Tribe or Nation in determining an appropriate course of action.

VII. Preparation of Archaeological Materials for Final Disposition

For all archaeological investigations conducted under this PA, FHWA shall ensure that artifacts and records are prepared in accordance with 36 CFR 79 and consistent with the guidelines of the PHMC.

- A. Artifacts recovered from Commonwealth property and all associated records will be curated at the State Museum of Pennsylvania or their designee. A copy of the appropriate final Archaeological Report will be included in the submission.
- B. When artifacts are recovered from property not owned by the Commonwealth, PennDOT will explain to the property owner the importance of artifact donation and will request that the owner sign a gift agreement donating the artifacts to the State Museum. If the property owner does not wish to donate the artifacts, PennDOT will complete the necessary analyses prior to returning the artifacts, and will submit all records to the State Museum. A copy of the appropriate final Archaeological Report will be included with the submission.
- C. FHWA will fund activities necessary to prepare collections for disposition; PennDOT will be responsible for any additional fees relevant to long term curation.
- D. Requests by Tribes or local institutions to curate archaeological collections will be considered on a case-by-case basis by FHWA and PennDOT in consultation with the State Museum of Pennsylvania.

VIII. Post-Review Discoveries

If previously unidentified historic properties are discovered after PennDOT has completed its review under this agreement, or if an undertaking affects previously known historic properties in an unanticipated manner, the procedures under 36 CFR 800.13 will be followed. If the discovery is made during construction, the contractor shall follow PennDOT Publication 408 and shall cease work in the area of the discovery. When the discovery consists of human remains, graves or grave-associated artifacts or other properties that may be of interest to federally recognized tribes with ancestral ties to Pennsylvania, FHWA will notify such tribes. For those Tribes that have signed an individual Memorandum of Understanding (MOU) with FHWA, the provisions of the MOU will be followed. Construction shall not resume in the area of the discovery until FHWA has complied with the requirements of 36 CFR 800.13.

IX. Emergencies

Pursuant to 36 CFR 800.12, in event of an emergency declared by the President of the United States and/or the Governor of Pennsylvania, PennDOT shall follow the procedures in the *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Emergency Relief Program* (January, 14, 2005) or any subsequent amendment to that agreement for review of projects under Section 106.

X. Annual Review and Monitoring

- A. FHWA will monitor activities carried out pursuant to this PA in consultation with the ACHP and SHPO. PennDOT shall cooperate with any party in carrying out the monitoring effort.
- B. PennDOT, the ACHP, and the SHPO may each establish its own internal monitoring program.
- C. During the first year after execution of this PA, PennDOT will meet with the SHPO on a quarterly basis to review the implementation of the PA, to discuss projects, or to suggest improvements. Any unresolved issues or recommendations for improvement or modifications to the implementation of the PA will be forwarded to the FHWA and ACHP for consideration.
- D. PennDOT will prepare an annual report on the activities carried out under this PA. The report will include a list of projects and findings made by PennDOT. The report may also identify issues, and make recommendations for improving the implementation of the PA. PennDOT will submit the report to the signatories of this PA within 30 days of the anniversary of the execution of the PA. The report will serve as the basis for an annual review of the PA.
- E. Within three months of receipt of the annual report, the FHWA, ACHP, SHPO and PennDOT will consult to review implementation of the terms of this PA. The review will include an assessment of PennDOT qualified staff to ensure that adequate staffing is maintained to implement the PA. Should monitoring activities result in evidence that the requirements of this PA are not being met, FHWA will meet with the SHPO, ACHP, and PennDOT to develop corrective measures. If an individual PennDOT District repeatedly fails to meet the requirements of this PA, FHWA may suspend that District from participating in the PA; in that case FHWA, or the PennDOT Central Office Cultural Resource Section Chief will be responsible for carrying out the requirements of 36 CFR Part 800, or this PA for that District for the duration of the suspension.

XI. Dispute Resolution

- A. Except as provided in Stipulation IX. B (below), should any party to this agreement, or a consulting party on an individual FHWA undertaking covered by this agreement, object within 30 days to any actions proposed or findings submitted for review, PennDOT shall consult with the objecting party(ies) to resolve the objection. If PennDOT determines that such objection(s) cannot be resolved, it shall request FHWA's assistance in resolving the objection. If FHWA determines that the objection remains unresolved, FHWA will:
- 1) Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise FHWA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to this Agreement, will be taken into account by FHWA in reaching a final decision regarding the dispute.
 - 2) If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to this Agreement.
 - 3) FHWA's and PennDOT's responsibility to carry out all other actions subject to the terms of this Agreement that are not subject of the dispute remain unchanged. FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. FHWA's decision will be final.
- B. If the SHPO objects to a National Register eligibility determination made by PennDOT or FHWA pursuant to this agreement, and that objection cannot be resolved through consultation among SHPO, FHWA, and PennDOT; OR if the ACHP so requests, FHWA will obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR 800.4(c)(2). If a consulting party or a member of the public objects to a National Register eligibility determination pursuant to this agreement and the objection cannot be resolved through consultation with that party, the FHWA in consultation with PennDOT and the SHPO will determine whether to request a Determination of Eligibility from the Keeper of the National Register of Historic Places.

XII. Amendment

- A. Any party to this PA may request that it be amended, whereupon the signatories shall consult to consider such amendment. Authorized representatives of all the original signatories shall sign the amendment; PennDOT's Office of Chief Counsel, the

Pennsylvania Governor's Office of General Counsel, and the Pennsylvania Office of Attorney General shall approve it as to legality and form.

- B. The lists of minor projects in Appendix C and the *Cultural Resources Handbook* may be modified by the mutual written agreement of FHWA, PennDOT, and the SHPO, and shall not require a formal amendment to this PA. Upon such agreed upon revisions, PennDOT shall provide the revised appendix to all the parties to the PA.
- C. Any other Appendix in this PA may be modified by the mutual written agreement of FHWA, PennDOT, and the SHPO and shall not require a formal amendment to the PA. Upon such agreed upon revisions, PennDOT shall provide the revised appendix to all the parties to the PA.

XIII. Termination

Any signatory to this PA may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, FHWA shall conduct individual project review pursuant to 36 CFR Part 800.

XIV. Duration

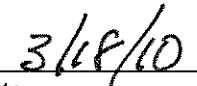
FHWA, PennDOT, SHPO, and the ACHP will review this PA every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the PA will be extended automatically for another ten years without reexecution.

Execution and implementation of this PA evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program and has afforded the ACHP a reasonable opportunity to comment.

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION


John M. Fowler, Executive Director

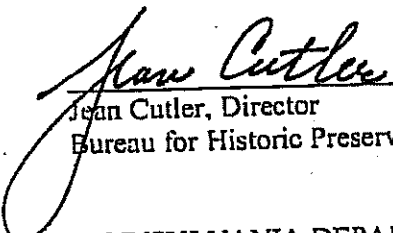

Date

FEDERAL HIGHWAY ADMINISTRATION

Renee Sigel, Division Administrator

Date

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER



Jean Cutler, Director
Bureau for Historic Preservation

2/8/2010

Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Scott Christie, PE
Deputy Secretary for Highway Administration

Date

CONCURRING PARTIES:

SENECA NATION

Kathleen Mitchell, THPO

Date

TONAWANDA SENECA NATION

Roger Hill, Chief


Date

PRESERVATION PENNSYLVANIA

Mindy Crawford, Director

Date

FEDERAL HIGHWAY ADMINISTRATION



Renee Sigel, Division Administrator

3/8/2010


Date

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

Jean Cutler, Director
Bureau for Historic Preservation

Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION



Scott Christie, PE
Deputy Secretary for Highway Administration

2/2/2010

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Deputy Secretary for Highway Administration

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TONAWANDA SENECA NATION

Roger Hill, Chief

Date

PRESERVATION PENNSYLVANIA

Mindy Crawford, Director

Date

2/5/2010

PENNSYLVANIA ARCHAEOLOGICAL COUNCIL

Richard Geidel, President

Date

SOCIETY FOR PENNSYLVANIA ARCHAEOLOGY

Paul Nevin, President

Date

<i>Approved as to Legality and Form</i>	
BY <u>Michael H. Kline</u> for Chief Counsel	Date <u>2/3/2010</u> <i>2/1/2010</i>
BY <u>[Signature]</u> Deputy General Counsel	Date <u>2-12-10</u> 2-12-10
BY <u>Angela M. Elliott</u> Deputy Attorney General	Date <u>2-24-10</u>

APPENDIX A.

Example Letter to Tribes

“On [month, day, year] the FHWA, the Pennsylvania SHPO, the Pennsylvania DOT, and the ACHP executed the Programmatic Agreement [insert formal name of the PA]. Under the provisions of this PA, PennDOT assumed the function of initiating the Section 106 process for [insert the name of the undertakings under the scope of the PA]. Accordingly, under the PA, PennDOT has been assisting FHWA with consultation with the SHPO and other consulting parties, including your tribe. If at any time an Indian tribe wishes to consult directly with FHWA regarding an undertaking carried out under the [identify program], we are available and ready to do so.

The FHWA takes its government-to-government responsibilities seriously and therefore wants to ensure that your tribe is comfortable continuing with this arrangement. If your tribe prefers to conduct government-to-government consultation directly with FHWA, as opposed to PennDOT, please respond to this letter stating such a preference. Upon receipt of such a letter, FHWA will engage in government-to-government consultation with your tribe for the undertaking(s) or types of undertakings you describe in your letter.

Please use the following address for such letters: [insert address].

Understand that if we do not get a response from your tribe, we will assume that your tribe does not object to PennDOT's initiation of consultation with your tribe regarding [insert the name of the undertakings under the scope of the PA].

We appreciate your attention to this matter.

Sincerely,

[signed by FHWA - District Administrator]"

APPENDIX B

Training Requirements

1. Training for District Designees

a) *Basic Training* - A District Designee must complete the following training prior to receiving authorization to review activities covered under Appendix C of this Agreement:

- Overview of this PA and its application
- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), or equivalent

b) *Refresher* – On a biennial basis, District Designees who have completed the basic training described above will be required to receive refresher training on the application of this PA. Every 5 years, the District Designee will attend Section 106 refresher training.

2. Training for PennDOT Cultural Resource Professionals (CRPs) and Consultants under Management Contract.

a) Prior to receiving authorization to review activities under Stipulation III.B of this PA, new PennDOT Cultural Resource Professionals, and consultants under management contract per Stipulation III.D of this PA, must complete the following training:

- Overview of this PA and its application
- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), or equivalent

b) *Refresher* - On an annual basis, CRPs and Consultants under Management Contract will receive refresher training on the application of this PA. Every 5 years, the CRPs will attend Section 106 refresher training.

3. Changes to the Section 106 regulations

Whenever major changes to 36 CFR 800 become effective, District Designees and Cultural Resource Professionals will participate in training on the new regulations within a year of when the new regulations go into effect.

APPENDIX C

Exempted Projects

Exempted Projects

District Designees and/or CRPs may review and exempt undertakings from further review, provided that the undertakings meet all the criteria in Section 1, and are limited to the activities in Section 2. District Designees may review projects in Section 2.A, although these activities may be reviewed by CRPs if a District lacks a Designee, or at the preference of a District. The activities in Section 2.B may only be reviewed and exempted by the CRPs.

Section 1. Criteria

- The undertaking is classified as categorically excluded under NEPA
- The undertaking is limited to the activities specified in Section 2
- The undertaking is on an existing transportation facility
- The undertaking is not within or adjacent to a National Historic Landmark or National Park, or property under the jurisdiction of the National Park Service
- The undertaking has no known public controversy based on historic preservation issues
- The undertaking requires no more than 3.6 m (12 ft) of new right-of-way on each side of the road, railbed, existing trail or pedestrian facility

Section 2. Activities

A. Projects Exempted by District Designee

District Designees may review and exempt undertakings from further review, provided the undertakings meet all of the criteria in Section 1, and are limited to the following activities.

1) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange

- a) Reconstruction of the existing roadbed (including existing shoulders), provided in-kind or compatible modern materials are used. Reconstruction may include, but is not limited to: resurfacing; restoration; rehabilitation; surface treatments; milling and grooving; installation of new drainage pipes within the roadbed.
- b) Creation of turning lanes within the existing roadbed or disturbed median.
- c) Removal or replacement of existing guide rail.
- d) Installation of new guiderail, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible.
- e) Installation of new or replacement of median barriers or median guide rail.
- f) Activities within existing disturbed highway interchanges.

2) Rehabilitation of existing at-grade railroad crossings provided there is no change in grade.

3) Drainage improvements, including installation, replacement or rehabilitation, and cleaning activities associated with existing drains, dikes, headwalls, installation or replacement of culverts with an opening of 8 ft. or less in width, pipes and storm sewers.

4) Bridge Projects

Rehabilitation or preservation of bridges (including culverts over 8 feet), that are less than 50 years old, previously determined not individually eligible, or categorically not individually eligible pursuant to Stipulation II H. This includes all preservation activities under Stipulation 2 of the Bridge Replacement, Rehabilitation and Preservation Programmatic Agreement (SOL 438-09-01) and all bridge rehabilitation activities under Stipulation 1 of this SOL (activities 2 through 10) except for activity 2 as it relates to the replacement of bridge parapets and activity 9 as it relates to bridge beautification activities. Bridge rehabilitation projects involving the replacement of parapets on bridges that are over 50 years old, regardless of the individual eligibility status of the bridge, must be reviewed by the District CRP. Bridge beautification activities must be reviewed by the District CRP. In-kind bridge, curb, and gutter replacement activities, however, are exempt activities.

5) Minor widening or minor changes in alignment provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible, and there are no known archaeological sites within the project area of potential effects, as determined from the Cultural Resources GIS (CRGIS), or visible evidence on the ground surface in the APE.

6) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances

a) Installation or upgrade of regulatory signs, and railroad warning signs and devices; upgrade of advisory signs.

b) Upgrade or replacement of less than 50 year old: lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers and/or noise walls. Exception: when in an urban (non-rural) area, the area must have been previously determined to be ineligible as a historic district.

c) Installation of new lighting, fencing, retaining walls, traffic signals, curbing, advisory signs, barriers and/or noise walls, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible.

d) Installation or replacement of Intelligent Transportation System (ITS) cameras and devices, and electronic advisory signs.

7) Sidewalks and Curbing

- a) Replacement of concrete curbing and sidewalks.
- b) Installation of new sidewalks and /or curbing, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible.
- c) Construction of sidewalk improvements in the form of curb cuts made under the American Disabilities Act and guidance in **PennDOT Design Manual 2** (Publication 13M), provided that there is not an eligible or listed historic district present.

8) Transportation Enhancement/Safe Routes to School Projects

- a) Streetscape improvement activities limited to installation of non-permanent amenities such as bike racks, trash receptacles, benches, and planting of trees.
- b) Construction of bicycle and pedestrian lanes, paths and facilities, and multi-use paths and facilities.
- c) Rail-to-Trail projects, provided: the project does not require the removal of the railroad bed or existing bridges, and there are no known archaeological sites within the project area of potential effects (APE), as determined from the Cultural Resources GIS (CRGIS), or visible evidence on the ground surface in the APE.
- d) Acquisition of scenic or preservation easements.

9) Alterations to facilities less than 50 years old to make them accessible for disabled persons.

10) Rehabilitation of existing safety rest areas and truck weigh stations.

11) Creation of Park-and-Ride/parking lots on existing parking lots or within existing disturbed right-of way.

12) Stream restoration and stabilization activities within the existing active channel banks, (e.g. channel cleaning and placement of rip-rap, etc.) provided there are no additional ground disturbing activities and access to the stream is located within a previously disturbed area.

13) Lease renewals and acquisition of previously leased PennDOT Maintenance sites.

14) Disposal of excess ROW provided that there are no known historic properties and/or archaeological sites within the property to be disposed, as determined from the Cultural Resources GIS (CRGIS).

15) Clean-up and restoration of roadway to pre-existing conditions for hillside slumps and slides; slope stabilization activities within existing right-of-way. When FHWA emergency relief funds will be used, these types of projects should be exempted under the *Programmatic Agreement Among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding for Emergency Relief Program* (SOL 438-05-1).

B. Projects Exempted by the District Cultural Resource Professional

1) Bridge Replacement Projects

The District CRP may review and exempt bridge replacement projects (including culverts over 8 ft.) that meet the criteria in Section 1 above based upon a scoping field view and/or video log review and/or background research (including, but not limited to, previous bridge inventory information, Cultural Resource GIS information, and historic maps)-provided that:

- a) the structure is less than 50 years old, the structure is categorically not eligible per Stipulation II.H, or previously determined not eligible and remains not eligible in the opinion of the CRP;
- b) the structure is being replaced on existing alignment;
- c) all standing structures within the project APE are less than 50 years old, or all properties over 50 years old were previously determined not eligible and remain ineligible in the opinion of the CRP, and the project is not within, or immediately adjacent to, an eligible or potentially eligible historic district;
- d) there are no known archaeological sites within the project area of potential effects, as determined from the Cultural Resources GIS (CRGIS), or visible evidence on the ground surface in the APE;
- e.) temporary impact areas, such as temporary crossing areas or staging areas are protected through the use of geotextile and no less than 2.5 ft. of clean fill.

APPENDIX D
Outline of Topics for Cultural Resources Handbook

Proposed Table of Contents for Cultural Resources Handbook

- I. Introduction
 - A. Governing Laws and Regulations
 - B. Handbook Applicability
- II. Roles and responsibilities
 - A. FHWA
 - B. USACE
 - C. SHPO
 - D. ACHP
 - E. Keeper of the National Register
 - F. Federally Recognized Tribes
 - G. Other Consulting Parties
 - H. The Public
 - I. PennDOT
 - J. Preservation Pennsylvania
- III. Early Coordination
 - A. Scoping
 - B. Area of Potential Effect
- IV. Determining if Projects are Exempt from Further Section 106 Review
 - A. Who may Determine if Projects are exempt from Further Section 106 Review
 - B. Conditions for Exempting Projects from Further Section 106 Review
 - C. List of Activities
 - D. Documenting Exemptions in CE Expert System
- V. Tribal Consultation
 - A. General Guidance
 - B. Specific Guidance
- VI. Public Involvement
 - A. Public Involvement Clearinghouse
 - B. Early Involvement
 - C. Public Involvement in Assessing Effect and Resolving Adverse Effects
- VII. Identification and Evaluation
 - A. Historic Resources
 - B. Archaeology

VIII. Determination of Effects

- A. General Guidance
- B. Determination of Effects for Historic Properties
- C. Determination of Effects for Archaeological Properties
- D. Re-evaluation of Finding

IX. Resolution of Adverse Effects

- A. Consultation
- B. Preparing MOAs, LOAs, and PAs
- C. Mitigation - Archaeology
- D. Mitigation – Historic Structures
- E. Public Outreach and Education

X. Standard Treatments

- A. Standard Treatment Options To Avoid Adverse Effects
- B. Use of Geotextile and Fill in Temporary Construction Areas
- C. Replacing a Contributing Bridge in a Historic District
- D. Bridge Marketing
- E. Invoking a Standard Treatment
- F. Documentation
- G. Standard Treatments To Mitigate Adverse Effects
- H. Implementation
- I. Modifying the List of Standard Treatments

XI. Permitted Projects under Section 106 or the State History Code

- A. USACE permitted projects
- B. Highway Occupancy Permits

XII. Documentation Standards

- A. Historic Structures
- B. Archaeology
- C. Documentation of Project Effects
- D. Electronic Documentation Standards

XIII. Emergencies and Late Discoveries

- A. Federal Emergency Relief-Funded Projects
- B. Non-Declared Emergencies
- C. Late Discoveries

XIV. Curation Standards

- A. Federal and State Laws, Regulations, and Guidance
- B. Disposition of Archaeological Artifacts and Records from Commonwealth Land, Private Property, or Federal Land
- C. Obtaining Signed Gift Agreements for Artifact Donation to the State Museum of Pennsylvania
- D. Procedures for Submission of Artifacts and Records to the State Museum of Pennsylvania
- E. Procedures for Returning Artifacts to Private Landowner
- F. Submission of Collections to a Museum or Institution Other than the State Museum.

XV. Quality Control and Quality Assurance

- A. Staffing – Minimum Qualifications
- B. Staffing – Delegated Signatory Authority
- C. Training Toward Delegation
- D. Continued Training – Staffing
- E. Project Manager Training
- F. Monitoring
- G. Transparency and Tracking
- H. Elevation
- I. Consultants

APPENDIX E
Sample Letter of Agreement

LETTER OF AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, THE PENNSYLVANIA STATE
HISTORIC PRESERVATION OFFICER
AND THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

WHEREAS, the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer (SHPO) and the Pennsylvania Department of Transportation (PennDOT) have signed a Programmatic Agreement (PA) regarding implementation of the Federal Aid Highway Program in Pennsylvania (*date*); and

WHEREAS, pursuant to Stipulation III.B.7 of the PA, PennDOT has determined that the *name of historic properties* is/are eligible or listed on the National Register of Historic Places; and

WHEREAS, pursuant to Stipulation III.B.10 of the PA, PennDOT has determined that the *name of project* will have an adverse effect on the *name of historic properties*; and

WHEREAS, Stipulation III.B.10 provides for the preparation and execution of a Letter of Agreement where there is agreement about measures to be taken to resolve adverse effects; and

WHEREAS, the FHWA has notified the ACHP of the adverse effect and the ACHP has declined to participate in consultation;

NOW, THEREFORE, the FHWA, SHPO, and PennDOT agree that the following stipulations will be completed by PennDOT in order to mitigate the adverse effects of the *name of project* on the *name of historic properties*.

Example Stipulations

The resolution of Adverse Effects may include one or more of the following stipulations (not in order of preference).

1. The *name of bridge or building* will be recorded following state level recordation guidelines in accordance with *How to Complete the Pennsylvania Historic Resources Survey Form*). The documentation will include a narrative and photographs. Copies of the final document will be provided to the SHPO for retention in the Bureau for Historic Preservation's (BHP) survey files and the Bureau's web pages and/or CRGIS .
2. The *name of bridge or building* will be recorded to HABS/HAER standards in accordance with the *Secretary of Interior Standards and Guidelines for Architectural and Engineering Documentation (FR 44730-34, 1989)*. The documentation will include a narrative and photographs. All documentation must include electronic format that is

web-ready for BHP's web pages and CRGIS. Archival copies of the final document will be provided to the SHPO and the National Park Service.

3. The name of bridge or building will be recorded in accordance with the National Park Service's digital photograph standards. .
4. A bridge marketing plan will be prepared for name of bridge.
5. A National Register nomination will be prepared for name of historic property, a similar resource to the one adversely affected, in accordance with *How to Complete the National Register Registration Form* (National Register Bulletin 16A). The nomination must be accepted by the Historic Preservation Board.
6. An historic structures survey will be prepared for describe, in accordance with the Bureau for Historic Preservation's *Guidelines for Comprehensive Survey*).
7. A historic context will be prepared for name following guidance in *Guidelines for Evaluation and Registering Archaeological Properties* (National Register Bulletin 36) and *How to Apply the National Register Criteria for Evaluation* (National Register Bulletin 15). The SHPO and PennDOT staff may develop lists of recommended themes and topics.
8. Original historic documents (e.g. diaries, maps, blueprints, histories, personal papers) describe will be copied or scanned for retention in the State Archives.
9. The original historic marker or plaque will be salvaged and incorporated into the new design, or displayed, or donated to an organization or other entity, or other.
10. The design and/or landscaping for the bridge, and/or other improvements will be developed in consultation with the SHPO and will ensure visual compatibility with the character of the name of historic district (SOL 470-98-71).
11. Data recovery excavations will be conducted at name of archaeological site following the established data recovery plan.
12. Mitigation for the adverse effect to name of archaeological site will include one or more of the following: syntheses, exhibits, displays, research, analyses, contexts, preservation in place, other, following the established alternative mitigation plan. 13. Each mitigation plan will include a plan for public outreach/information and will include one or more of the following:
 - a) Insert Number pamphlets, or brochures, or posters, or booklets, describe content will be prepared and distributed to name of organization(s).
 - b) a website or web-ready materials for the Bureau for Historic Preservation's exiting web page will be created describe contents of website or materials.
 - c) a school lesson plan will be developed for describe contents of lesson plan.

- d) a video will be developed for describe content of video.
- e) an informational kiosk will be created and installed describe what will be included in the kiosk.
- f) a wayside marker or informational display will be created and installed describe the content of the marker or display.

14. This list may be amended, as needed, upon agreement of all parties.

Review and Documentation

Drafts of reports, brochures, pamphlets, posters, recordations, text, exhibit design, videos, or any other product prepared as mitigation of adverse effects will be submitted to FHWA, the SHPO and consulting parties for review in accordance with Stipulation IV of the PA. PennDOT will consider any comments in the preparation of a final product.

The letter agreement does not supercede other stipulations of the PA, specifically:

- VI. Treatment of Human Remains;
- VII. Preparation of Archaeological Materials for Final Disposition;
- VIII. Post Review Discoveries;
- XI. Dispute Resolution;
- XII. Amendment;
- XIII Termination.

FEDERAL HIGHWAY ADMINISTRATION

BY: _____ DATE: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____

OTHER CONCURRING PARTIES

Approved as to Legality and Form

BY: _____ DATE _____
For Chief Counsel

APPENDIX F

Standard Treatments

A. Standard Treatment Options to Avoid Adverse Effects

1. Activities within or Adjacent to Historic Districts or Historic Properties

A standard treatment may be applied for the following activities when historic properties or historic districts are present, as determined by the PennDOT Cultural Resource Professional. The CRP will issue a finding of effect and may apply the standard treatment without further consultation with the SHPO.

- a) Installation of new lighting (in-kind, or historic replica).
- b) Replacement of curbs, curbing and sidewalks provided in-kind or compatible modern materials are used.
- c) Installation of new curbing and sidewalks using brick, slate, granite or other stone; or concrete when already present within a historic district.

2. Archaeology

- a) *Geotextile and fill in temporary construction areas* – PennDOT may use protective geotextile fabric and fill in temporary construction areas such as bridge run-arounds, haul roads, and other work areas when the temporary construction area is located in a high probability area for archaeological sites. PennDOT must calculate the level of protection needed based on the characteristics of the existing soils, and the size and weight of vehicles to be used within the temporary construction area. Installation and removal of the fill and geotextile material must ensure that disturbance to the ground surface or soil compaction does not occur. The CRP will issue a finding of no adverse effect. No additional consultation will be required.

B. Standard Treatment Options to Mitigate Adverse Effects

When the PennDOT Cultural Resource Professional issues a finding of adverse effect, a standard treatment may be applied to mitigate adverse effects, provided that the FHWA, SHPO and consulting parties have been given the opportunity to provide their views.

1. Historic Bridges

- a) Marketing Historic Bridges
- b) *Replacement of Bridges Contributing to a Historic District** - The District CRP will work with the project team and consulting parties on a replacement design that either mimics the appearance of the historic (contributing) bridge or incorporates design elements which are in keeping with the characteristics that make the historic district eligible for the National Register (i.e. a Context Sensitive Design). Although the project would have an adverse effect, no other mitigation will be necessary for projects in which

the only adverse effect is the replacement of a contributing bridge except as negotiated with the community/consulting parties.

* Bridges that are also individually eligible may require additional mitigation measures.