



Preserving America's Heritage

December 14, 2017

Mr. Keith M. Lynch  
Director, Program Development  
Federal Highway Administration  
Pennsylvania Division  
228 Walnut Street, Room 508  
Harrisburg, PA 17101-1720

Ref: *Amendment to the Programmatic Agreement regarding Implementation of the  
Federal Aid Highway Program in Pennsylvania*

Dear Mr. Lynch:

Enclosed is your copy of the fully executed Amendment to the Programmatic Agreement for the referenced project. By carrying out the terms of the Agreement, the Federal Highway Administration (FHWA) will fulfill its responsibilities under Section 106 of the National Historic Preservation Act and the regulations of Advisory Council on Historic Preservation. The original Agreement will remain on file at our office.

We commend the FHWA for working closely with the Pennsylvania Department of Transportation (DOT) and the Pennsylvania State Historic Preservation Officer (SHPO) in developing this PA. Your diligence in consulting with the various parties in negotiating the stipulations has resulted in a comprehensive PA that should cover Pennsylvania's Federal Aid Highway projects and provide significant efficiencies in the foreseeable future.

If we may be of further assistance as the PA is implemented, please contact Ms. MaryAnn Naber at (202) 517-0218, or via e-mail at [mnaber@achp.gov](mailto:mnaber@achp.gov).

Sincerely,

Charlene Dwin Vaughn, AICP  
Assistant Director  
Office of Federal Agency Programs  
Federal Permitting, Licensing, and Assistance Section

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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AMENDED  
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);

WHEREAS, the FHWA 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 on March 18, 2010, executed a programmatic agreement (PA) regarding implementation of the Federal Aid Highway Program in Pennsylvania 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) (54 U.S.C. § 306108) (Section 106);

WHEREAS, the signatories to the PA have proposed and have agreed to certain changes in accordance with Stipulation XII, and have agreed to amend the PA through this amended programmatic agreement (Amended PA);

WHEREAS, cooperating Federal agencies that recognize FHWA as the lead agency for an undertaking may fulfill their obligations under Section 106 according to 36 CFR 800.2(a)(2), provided that FHWA and PennDOT follow the requirements of this Amended 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;

WHEREAS, the FHWA recognizes that it has a unique legal relationship with Indian tribes 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;

WHEREAS, in the development of this Amended PA, the FHWA has contacted the following federally recognized Tribes and Nations with ancestral ties to Pennsylvania that may attach religious or cultural significance to properties in Pennsylvania, and provided them the opportunity to consult: the Absentee-Shawnee Tribe of Oklahoma, the Cayuga Nation, the Delaware Nation, the Delaware Tribe of 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 (collectively, Tribes and Nations);

WHEREAS, the Pennsylvania Department of Transportation (PennDOT) has participated in the consultation and has been invited to be a signatory to the Amended PA;

WHEREAS, the FHWA has invited other parties to participate in the development of this PA pursuant to 36 CFR§ 800.2 (c)(5), namely the Society for Pennsylvania Archaeology, the Pennsylvania Archaeological Council, Preservation Pennsylvania, the Allegheny National Forest, and the US Army Corps of Engineers Baltimore, Philadelphia and Pittsburgh Districts;

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

WHEREAS, PennDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards (SOI's Standards: [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) in the fields of archaeology and architectural history, or related fields;

WHEREAS, PennDOT, in consultation with FHWA, ACHP, and the SHPO, has developed a handbook containing guidance on how to implement this Amended PA and the handbook has been made publicly available;

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;

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;

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

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, with the assistance of PennDOT, shall ensure that the following measures are carried out:

### **I. Applicability and Scope**

- A. The PA among FHWA, SHPO, ACHP, and PennDOT regarding implementation of the Federal Aid Highway Program in Pennsylvania dated March 18, 2010 is superseded by and replaced in its entirety with this Amended PA. This Amended PA also supersedes and replaces in its entirety the PA among FHWA, SHPO, ACHP, and PennDOT regarding FHWA's Emergency Relief Program dated January 14, 2005.
- B. This Amended PA sets forth the process by which FHWA will meet its responsibilities under Section 106, with the assistance of PennDOT, for transportation projects under the Federal-Aid Highway Program.
- C. This Amended PA applies to any project under the Federal-Aid Highway Program. The purpose of this Amended 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.
- D. 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.
- E. Any other designated lead federal agency may use PennDOT studies to support their findings and determinations under Section 106 of the NHPA.

### **II. 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 certain requirements as assigned by this Amended 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 Tribes and 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 Amended PA, or follow the procedures as described in 36 CFR 800.3-800.6. If

PennDOT cannot comply with the requirements of this Amended PA for any undertaking under the Federal-Aid Highway Program, FHWA shall comply with 36 CFR 800.

#### B. Qualifications and Training

- 1) PennDOT shall employ professionally qualified personnel sufficient to implement this Amended PA. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are employees of the Commonwealth of Pennsylvania and will meet the Secretary of the Interior's Standards for Professional Qualifications (SOI's Standards: [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) in the fields of archaeology or architectural history. Use of consultants will be guided by Stipulation III.D.
- 2) PennDOT, with the assistance of FHWA and the SHPO, will provide training for PennDOT personnel and their consultants relative to implementation of this Amended 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.

#### C. Tribal Consultation

- 1) Before the stipulations of this Amended 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 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 Amended PA goes into effect, FHWA shall send a letter similar to that in Appendix A to the Tribes and Nations.
- 3) PennDOT may, on behalf of FHWA, initiate consultation with Tribes and Nations for individual undertakings carried out under the provisions of this Amended 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) or subsequent guidance, and, for those Tribes and Nations that have signed an individual memorandum of understanding with FHWA, the provisions of that agreement will be followed. 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. Historic Bridges**

- 1) The current Historic Bridge Inventory and Evaluation will provide individual determinations of eligibility for bridges 20 ft. and greater. The eligibility of bridges will also be guided by the ACHP's Program Comment for Post-1945 Concrete and Steel Bridges. 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 shall not be considered individually eligible for the National Register.
  - 2) PennDOT and the SHPO will finalize the results of the reevaluation of metal truss bridges within six (6) months of the execution of this Amended PA, including a summary report and determinations of eligibility updated in the SHPO's Cultural Resource GIS.
  - 3) PennDOT, in consultation with the SHPO, will evaluate other bridge types and designs for loss and according to current scholarship and, if deemed necessary by PennDOT and the SHPO, will reevaluate these bridge types and designs within four (4) years of the signing of this Amended PA.
  - 4) Every ten (10) years, PennDOT, in consultation with the SHPO will develop a plan to review the population of bridges, which may result in the reevaluation of all or a portion of these bridges. PennDOT will prepare a written report summarizing the review, will prepare a report for any bridge population reevaluation, and will provide it to the signatories to this Amended PA and the public.
- E. PennDOT and FHWA will collaborate with the SHPO to continue the development of the CRGIS, 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**

PennDOT, FHWA, and the SHPO will observe the following requirements for all projects covered under this Amended PA.

#### **A. Level 1 Projects**

Projects meeting the Criteria list in Appendix C, and limited to the activities specified under Appendix C: Level 1 Activities, have little or no potential to affect historic properties and may be reviewed by PennDOT District environmental staff (District Designee(s)). In the absence of a District Designee, or at the request of a District Designee, PennDOT CRPs may review projects listed in Appendix C: Level 1 Activities.

- 1) Training – District Designees shall receive training in accordance with Appendix B prior to receiving authorization to review Level 1 project activities defined in Appendix C.
  - 2) The District 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 District Designee may consult with the PennDOT CRPs in reaching a decision. The District Designee will document his/her decision in PennDOT's Categorical Exclusion Expert System (CEES), as part of the appropriate National Environmental Policy Act (NEPA) documentation.
  - 3) Reporting of Level 1 Projects - PennDOT will create an electronic report of projects reviewed by the District Designees that meet the conditions in Appendix C. PennDOT shall make the report available on an annual basis to the FHWA, SHPO, and the public on PennDOT's Project PATH website.
- B. Level 2 Projects - Review by PennDOT Cultural Resource Professionals:  
PennDOT CRPs will review the projects listed under Appendix C: Level 2 Activities, provided the projects meet the Criteria list in Appendix C and are limited to activities and conditions included in Appendix C: Level 2 Activities. Such projects may be exempted from further review under Section 106.
- 1) The CRP will document his/her decision in PennDOT's CEES as part of the appropriate NEPA documentation.
  - 2) Reporting of Appendix C: Level 2 Projects - PennDOT will create an electronic report of projects reviewed by the CRPs that meet the conditions in Appendix C. PennDOT shall make the report available on an annual basis to the FHWA, SHPO, and the public on PennDOT's Project PATH website.
- C. For projects that do not meet the conditions of Stipulation III.A and III.B, and Appendix C, the PennDOT CRPs who meet the SOI's Standards will be responsible for carrying out the following requirements.
- 1) FHWA authorizes PennDOT to consult with the SHPO and other consulting parties on their behalf for the following purposes:
    - a) establishing whether there is an undertaking with the potential to affect historic properties;
    - b) soliciting and identifying consulting parties;
    - c) conducting public involvement activities;
    - d) establishing the Area of Potential Effect (APE);

- e) determining the National Register eligibility of properties within the APE;
- f) determining effect; and initiating consultation on the resolution of adverse effects.

## 2) Non-Exempt Project Responsibilities

### a) 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 are likely to have effects on historic properties. The Early Notification form will include a brief project description and a map location, as described in PennDOT's Cultural Resources Handbook.

### b) 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.

### c) Tribal Consultation

PennDOT CRPs will initiate consultation with appropriate federally recognized Tribes and Nations following the protocol in Stipulation II.C and the procedures in PennDOT's Tribal Consultation Handbook (Publication 591) or the *Cultural Resources Handbook*, where relevant. For those Tribes or Nations that have signed an individual memorandum of understanding with FHWA, the provisions of that agreement will be followed.

### d) 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.



e) Area of Potential Effect

PennDOT CRPs will define the undertaking's area of potential effect as defined in 36 CFR 800.16(d) (APE). 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 this Amended PA and the Cultural Resources Handbook.

- (1) 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.
- (2) 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.

f) Determine the Appropriate Level of Identification

- (1) 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.
- (2) 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 Amended PA.
- (3) 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;
- when access to property is restricted; or
- when the specific location of ground disturbance will not be 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.C.2).e.(2), and III.C.2).f - III.C.2).i herein, as appropriate.

- (4) When PennDOT wishes to use a phased identification and evaluation process but none of the conditions in Stipulation III.C.2).f.(3) apply, PennDOT will prepare a project specific programmatic agreement for the undertaking, per 36 CFR 800.14(b).

g) Determination of Eligibility

- (1) 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.
- (2) 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 IIIC.2).i.(2) apply or when III.C.2.j 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.

h) 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.

i) No Adverse Effect

(1) 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.

(2) Under the following conditions, the PennDOT CRP will notify FHWA and will request the concurrence of the SHPO on findings of No Adverse Effect:

- (a) 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,
- (b) When there is public controversy on historic preservation issues,
- (c) At the request of the CRP,
- (d) 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.

j) Adverse Effect

- (1) 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.
- (2) 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:
  - (a) When the undertaking will adversely affect a National Historic Landmark, as defined in 36 CFR 65,
  - (b) When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties,
  - (c) When PennDOT, the SHPO, and FHWA are not able to reach agreement on the resolution of adverse effects.

(d) 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 D. The execution of a letter of agreement and implementation of its terms will document FHWA's compliance with Section 106 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 form and legality by PennDOT's Office of Chief Counsel.

(3) 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:

- (a) When one of the potential signatories to the letter of agreement was not signatory to this Amended PA,
- (b) If a proposed mitigation commitment is not on the list of potential commitments in the letter of agreement in Appendix D,
- (c) If a consulting party objects to the proposed resolution of adverse effects.

D. Review by SHPO

- 1) The SHPO will have 30 days to respond to any request for review made by PennDOT under Stipulations III.C.2).e(2), III.C.2).g.(2), and III.C.2).i.(2), unless the following Stipulations III.D.2 or III.D.3 apply.
- 2) The review times specified in any FHWA/PennDOT/SHPO interagency funding agreement will supersede III.D.1 above.
- 3) Provided that consulting Tribes and Nations, 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 to both parties.

E. 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 Amended 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 Amended PA, unless PennDOT obtains the written approval of FHWA and the SHPO, and provided the circumstances of Stipulation III.E.3 are met.

#### **IV. Documentation**

With the exception of projects covered under Stipulation III.A, III.B, and Appendix C, all findings and determinations made under this Amended PA will be documented in accordance with 36 CFR 800.11 and consistent with the Cultural Resources Handbook developed to implement this Amended 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 all applicable laws, regulations, ordinances, and 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 Amended PA. Once FHWA, SHPO, and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix E 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 E.

## **VI. Treatment of Human Remains**

If human remains, graves, or grave-associated artifacts are encountered during any archaeological investigations conducted under this Amended 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 with FHWA, the provisions of that agreement will be followed. If historic burials or cemeteries are encountered, PennDOT will follow procedures consistent with 9 Pa.C.S. § 101 et seq. 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 Amended 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 PHMC through its bureau of the State Museum of Pennsylvania (State Museum) or its designee. A copy of the appropriate final archaeological report prepared according to the SHPO's Guidelines for Archaeological Investigations in Pennsylvania 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.

## **VIII. Post-Review Discoveries**

If previously unidentified historic properties are discovered after PennDOT has completed its review under this Amended PA, 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 immediately cease work in the area of the discovery, and shall follow PennDOT Publication 408. 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, PennDOT will follow the procedures in Stipulation VI. 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 the event of an emergency declared by the President of the United States and/or the Governor of Pennsylvania, PennDOT and FHWA shall follow the procedures in Appendix F.

- A. Applicability – Emergency projects are defined as those projects defined in 23 CFR § 668.103 and 23 CFR § 668.109 and eligible for Emergency Relief (ER) funds.
- B. Covered Activities
  - 1) Type 1 Emergency Activities are immediate rescue and salvage operations conducted to preserve life and property. These are exempt from the provisions of Section 106 [36 CFR § 800.12(d)].
  - 2) Type 2 Emergency Activities are defined as repair activities to existing infrastructure and other activities necessary to quickly restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities. These are exempt from the provisions of Section 106.
  - 3) Type 3 Emergency Activities are defined as all other Applicable Emergency projects not covered under Type 1 or 2.
- C. Expedited Consultation (for Type 3 Activities)



- 1) For activities implemented within 30 days of the Declaration, the consultation period is 7 days.
- 2) For activities implemented within 180 days of the Declaration, the consultation period is 15 days.

## **X. Annual Review and Monitoring**

- A. FHWA will monitor activities carried out pursuant to this Amended 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. PennDOT will meet with the SHPO annually, or as needed, to review the implementation of this Amended PA to discuss projects, or to suggest improvements. Any unresolved issues or recommendations for improvement or modifications to the implementation of this Amended 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 Amended 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 this Amended PA. PennDOT will submit the report to the signatories of this Amended PA, within 60 days of the start of the calendar year. The report will serve as the basis for an annual review of this Amended 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 Amended PA. The review will include an assessment of PennDOT qualified staff to ensure that adequate staffing is maintained to implement this Amended PA. Should monitoring activities result in evidence that the requirements of this Amended 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 Amended PA, FHWA may suspend that District from participating in this Amended 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 Amended 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 Amended PA, or a consulting party on an individual undertaking covered by this Amended PA, object within 30 days to any actions proposed or findings submitted for review, PennDOT shall notify FHWA and continue to 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 Amended PA, 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 Amended PA.
  - 3) FHWA's and PennDOT's responsibility to carry out all other actions subject to the terms of this Amended PA 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 Amended PA, 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 Amended PA 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 Amended 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, on behalf of SHPO, PHMC'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 maybe modified by the mutual written agreement of all parties to the Amended PA, and shall not require a formal amendment to this Amended PA. Upon such agreed upon revisions, PennDOT shall provide the revised appendix to all the parties to this Amended PA.

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

### **XIII. Termination**

Any signatory to this Amended 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 of the Amended PA**

This Amended PA shall not become legally binding and effective until all signatories, including those signing their approvals for form and legality, have signed the Agreement and the Council provides a fully signed copy to the Grantee. For purposes of this Amended PA, the effective date shall be the date the last signing party has affixed their signature (the Effective Date).

FHWA, PennDOT, SHPO, and the ACHP will review this Amended PA, every ten (10) years from the Effective Date for modifications or termination. If no changes are proposed and no party objects, the term of the PA, as amended, will be extended automatically for another ten years.

### **XV. Severability**

The provisions of this Amended PA shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

### **XVI. Assignment**

The responsibilities included in this Amended PA may not be assigned by any party to this Agreement either in whole or in part, without the written consent of the Signatories.

## **XVII. Notices**

A. The contact person for each of the signatories of the Amended PA shall be the following:


- 1) For ACHP: Director, Office of Federal Agency Programs, 401 F Street NW, Suite 308, Washington DC 20001-2637, Telephone Number: (202) 517-0200.
- 2) For FHWA: Director of Program Development, 228 Walnut Street, 5<sup>th</sup> Floor, Harrisburg, PA 17101, Telephone Number: (717) 221-4545
- 3) For PennDOT: Deputy Secretary for Highway Administration, 400 North Street, 8<sup>th</sup> Floor, Harrisburg, PA 17112, Telephone Number: (717) 787-6875.
- 4) For SHPO: Deputy SHPO, 400 North Street, 2<sup>nd</sup> Floor, Harrisburg, PA 17120, Telephone number (717) 787-4215.

B. Any signatory may change its designated contact person by providing written notice to the other signatories.

Execution and implementation of this agreement evidences that FHWA has delegated certain Section 106 responsibilities to PennDOT, and has afforded ACHP a reasonable opportunity to comment on the Federal-Aid Highway Program and its individual undertakings in Pennsylvania; that FHWA has taken into account the effects of the program and its individual undertakings on historic properties, and that FHWA has complied with Section 106 of the NHPA and 36 CFR 800 for the program and its individual undertakings.

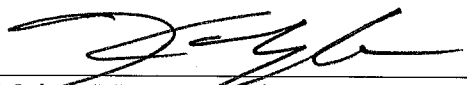
SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

  
John M. Fowler, Executive Director

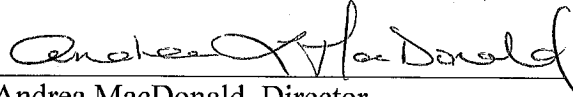
12/14/17  
Date

FEDERAL HIGHWAY ADMINISTRATION

for   
Moises Marrero, Acting Division Administrator

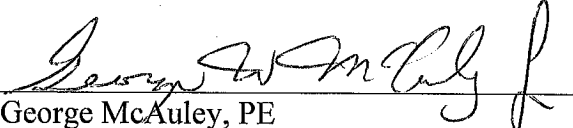
12/5/2017  
Date

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

  
Andrea MacDonald, Director  
State Historic Preservation Office

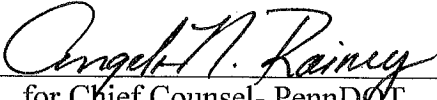
11/14/2017  
Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

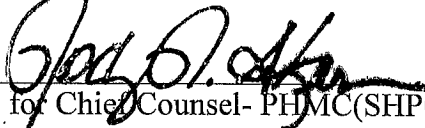
  
George McAuley, PE  
Deputy Secretary for Highway Administration

11/13/17  
Date

*Approved as to Legality and Form*

BY   
for Chief Counsel- PennDOT


11/17/17  
Date

BY   
for Chief Counsel- PHMC(SHPO)

11/17/17  
Date

BY   
Deputy General Counsel

11/17/17  
Date

BY   
Deputy Attorney General

12/4/17  
Date

## **APPENDIX A**

### Example Letter to Tribes

“On [month, day, year] the Federal Highway Administration Pennsylvania Division (FHWA), the Pennsylvania SHPO, the Pennsylvania DOT, and the Advisory Council on Historic Preservation executed an Amended Section 106 Programmatic Agreement for the Federal-Aid Highway Program in Pennsylvania (PA). Under the provisions of the 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, specifically PennDOT environmental staff, must successfully complete the following training prior to receiving authorization to review activities covered under Appendix C of this Amended PA:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- Application of the Amended PA, and the Cultural Resources Handbook, including an overview on Tribal consultation; and
- The SHPO's Cultural Resources Training (taken within 2 years of delegation).

b) Refresher – In order to maintain delegation, District Designees must successfully complete the following training:

- Every five years – The State Historic Preservation Officer's (SHPO) Cultural Resources Training;
- Every five years – one of the following courses:
  - NHI 142049: Beyond Compliance: Historic Preservation in Transportation Project Development\*
  - Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106)\*OR
  - Attendance of 7 hours in eligible Byways to the Past/State Heritage Conference sessions or workshops. Eligible sessions and workshops will be determined by the PennDOT Cultural Resource Section Chief; and
- Every two years – Cultural Resources Handbook Basics (webinar).

\* Passing a pre-test will satisfy completion of these courses.

#### **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 Amended PA, new PennDOT Cultural Resource Professionals, and consultants under



management contract per Stipulation III.D of this Amended PA, must successfully complete the following training:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- Application of the Amended PA and Cultural Resources Handbook, including Tribal consultation; and
- The SHPO's Cultural Resources Training (taken within 2 years of delegation).

b) Refresher – In order to maintain delegation, CRPs and Consultants under Management Contract must successfully complete the following training:

- SHPO's Cultural Resources Training must be taken every five years;
- Every five years – one of the following courses:
  - NHI 142049: Beyond Compliance: Historic Preservation in Transportation Project Development\*
  - Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106)\*
  - Attendance of 7 hours in eligible Byways to the Past/State Heritage Conference sessions or workshops. Eligible sessions and workshops will be determined by the PennDOT Cultural Resource Section Chief; and
- Every year – Application of the Amended PA and Cultural Resources Handbook.

\* Passing a pre-test will satisfy completion of these courses.

### 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 Activities**

PennDOT District Designees and/or Cultural Resource Professionals (CRP) may review and exempt undertakings from further review, provided that the undertakings meet all the criteria below, and are limited to the activities listed under Level 1 and Level 2. District Designees may only review Level 1 project activities. If a District lacks a Designee, or at the preference of a District, the CRPs will review Level 1 activities. Level 2 project activities may only be reviewed and exempted by the CRPs.

#### Criteria

The undertaking must be classified as categorically excluded under NEPA and the following criteria must apply:

- The undertaking is limited to the activities specified under Level 1 and 2 below;
- 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; and
- The undertaking requires no more than 3.6 m (12 ft) of new right-of-way and/or new permanent easement beyond the existing right-of-way and/or existing permanent easement at its widest point, on each side of the road, rail bed, existing trail or pedestrian facility

#### Level 1 Activities

##### A. Projects Exempted by District Designee or CRP

- 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. This includes all pavement preservation, maintenance betterments and roadway rehabilitation activities under Stipulation 1 of the Programmatic Agreement between the FHWA and PennDOT for Bridge, Roadway and Non-Complex Projects (BRPA). This also includes installation of pavement markings (both normal and raised) and snow and ice detectors.
  - b) Creation of turning lanes or crossovers 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, culverts with an opening 8 feet 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 Part B, Stipulation 2 of the BRPA and all bridge rehabilitation activities under Part B, Stipulation 1 of this agreement (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 and may only be exempted by the 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; or upgrade of advisory signs.
  - b) Upgrade or replacement of modern (estimated to be less than 50 years 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, 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, including Dynamic Variable Message Sign structures.

7) Sidewalks and Curbing

- a) Replacement of concrete curbing and sidewalks.
- b) Installation of new sidewalks and/or curbing, and/or bulb-outs, 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 drainage cuts or 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, and 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 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 Emergency Relief Program (SOL 438-05-1).

## Level 2 Activities

### B. Projects Exempted by the Cultural Resource Professional

The District CRP may review and exempt Section 2.A projects that meet the criteria in Section 1 but that do not meet the additional, activity specific, criteria; however, these activities (enumerated below) are still subject to the specified conditions below. The CRP may also exempt certain bridge replacement/removal projects that meet the criteria in Section 1 as well as the additional conditions enumerated below.

The CRP exemptions will be 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).

- 1) Bridge Replacement/Removal Projects  
The District CRP may review and exempt bridge replacement projects (including culverts over 8 ft.) provided that:
  - a) The structure is less than 50 years old, the structure is categorically not eligible per Stipulation 11.H, or previously determined not eligible and remains not eligible in the documented 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 not eligible in the opinion of the CRP, or all properties over 50 years old are not eligible 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 CRGIS, or visible evidence on the ground surface in the APE; and
- e) The District CRP for Archaeology has determined that any temporary construction easements associated with the project have been previously disturbed. If any temporary construction easement is determined to have a high probability for archaeological sites, and geotextile and fill will be used as a protective measure in lieu of archaeological testing, the exemption cannot be applied. The CRP must follow the procedures in Appendix E.2 for application of the standard treatment.

## 2) Bridge Rehabilitation or Preservation Projects

The District CRP may review and exempt bridge rehabilitation and preservation activities under Part B, Stipulation 1, category 2 and category 9 of the Bridge and Roadway Programmatic Agreement, including projects consisting of the replacement of bridge parapets, provided that the bridge is not individually eligible for, or listed on, the National Register, and the bridge does not contribute to an eligible or listed historic district; or, for bridges that do contribute, the replacement parapets will replicate the existing parapets or parapets in place during the period of significance. The CRP can exempt bridge beautification activities, such as lighting, provided the bridge beautification activities do not affect the character defining elements of an historic district.

- 3) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange Installation of new guiderail, provided that any structures over 50 years old in the APE are not eligible for listing on the National Register in the opinion of the CRP.
- 4) Minor widening or minor changes in alignment provided that any structures over 50 years old in the APE are not eligible for listing on the National Register in the opinion of the CRP 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.
- 5) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances
  - i. Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls in an historic district, and/or where other historic

properties are present in the APE, provided that the upgrade or replacement is in-kind in general appearance. Upgrade or replacement of over 50 year old lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls provided, in the opinion of the CRP, the elements being upgraded/replaced are not individually eligible and there is neither an historic district nor other historic properties in the APE.

- ii. Installation of new lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls, as well as new advisory signs, provided that any structures over 50 years old in the APE are not eligible for listing on the National Register in the opinion of the CRP.

#### 6) Sidewalks and Curbing

- a) Installation of new sidewalks and/or curbing, and/or bulb-outs provided that any structures over 50 years old in the APE are not eligible for listing on the National Register in the opinion of the CRP.
- b) Construction of sidewalk improvements in the form of drainage cuts or curb cuts made under the American Disabilities Act and guidance in PennDOT Design Manual 2 Publication 13M), provided that the curb cuts are determined to have no effect on any eligible or listed historic district or other eligible or listed property in the APE.

**APPENDIX D**  
Letter of Agreement Template

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 an Amended Programmatic Agreement (Amended PA) regarding implementation of the Federal Aid Highway Program in Pennsylvania (add date);

WHEREAS, PennDOT proposes to describe project;

WHEREAS, PennDOT has established the Project's area of potential effects (APE), as defined in 36 CFR 800.16(d), describe APE;

WHEREAS, pursuant to Stipulation III.C.2).g of the Amended PA, PennDOT has determined that the name of historic properties is/are eligible or listed on the National Register of Historic Places;

WHEREAS, pursuant to Stipulation III.C.2).j of the Amended PA, PennDOT has determined that the name of project will have an adverse effect on the name of historic properties;

WHEREAS, Stipulation III.C.2).j.(3) provides for the preparation and execution of a Letter of Agreement where there is agreement about measures to be taken to resolve adverse effects among the required parties;

Optional 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 Stipulation Activities**

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

1. Recordation of historic property according to state level guidelines.



2. Recordation of historic property to HABS/HAER standards.
3. Recordation of historic property in accordance with the National Park Service's digital photograph standards.
4. Marketing of name of bridge according to the process outlined in PennDOT's Cultural Resources Handbook, Publication 689.
5. Preparation of a National Register nomination for name of historic property, or a similar resource to the one adversely affected, in accordance with How to Complete the National Register Registration Form (National Register Bulletin 16A).
6. Preparation of an above-ground historic properties survey for name of historic property in accordance with the Bureau for Historic Preservation's Guidelines for Architectural Investigations in Pennsylvania.
7. Preparation of a historic context 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).
8. In consultation with the Pennsylvania State Archives, copy or scan original historic documents (e.g. diaries, maps, blueprints, histories, personal papers) for retention in the State Archives.
9. If the name of bridge is to be demolished, salvage the original historic marker or plaque and (specify) incorporate into the new design, or display, or donate to an organization or other entity, or other.
10. Development of design and/or landscaping for the bridge, and/or other improvements to ensure visual compatibility with the character of the name of historic district.
11. Data recovery excavations at name of archaeological site following the established data recovery plan.
12. Mitigation for the adverse effect to name of archaeological site that does not involve data recovery excavations, such as: syntheses, exhibits, displays, research, analyses, contexts, preservation in place, or (specify other), following the established alternative mitigation plan.
13. Development of information or outreach plan for the public that may include one or more of the following:
  - a) Preparation of pamphlets, or brochures, or posters, or booklets;

- b) Development of a website or web-ready materials for the Bureau for Historic Preservation's existing web page or other web page will be created describe contents of website or materials;
  - c) Development of a school lesson plan;
  - d) Development of a video;
  - e) Creation and installation of an informational kiosk;
  - f) Creation and installation of a wayside marker or informational display;
  - g) Creation and installation of an exhibit; or
  - h) Presentation of a lecture or lectures on the results of archaeological excavation or research.
14. Salvage and storage of bridge elements by PennDOT for later reuse.
  15. Implementation of a bridge preventative maintenance and condition monitoring program to help maintain the existing historic integrity of the structure until it can be effectively marketed.
  16. Development of a contextual narrative on the bridge type (i.e. historical development, notable manufacturers, character defining features, rehabilitation and preservation options) and an analysis of the remaining population within the state for inclusion on the Bureau for Historic Preservation's bridge website or other web page.
  17. Use of funds for assisting potential buyers of historic bridges in purchasing a bridge in response to PennDOT's marketing efforts.
  18. Regional or bridge type management plans for historic bridges.
  19. Development of a local/municipal historic preservation plan.

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 Amended PA. PennDOT will consider any comments in the preparation of a final product.

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

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

## **Sunset/Duration**

These stipulations will be completed within X years of the execution of this Letter of Agreement (LOA). If any of the stipulations are not completed within this timeframe, or if PennDOT determines that any of the stipulation cannot be completed, the parties to this LOA shall meet to determine whether any revisions are needed to this LOA. If revisions are needed, the parties shall consult in accordance with 36 CFR 800 to make such revisions. Any amendments to the LOA will be executed following the format in ACHP's Guidance on Agreement Documents (2015).

## **Termination**

Any signatory may terminate this LOA by providing notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this Letter of Agreement will require compliance with 36 CFR 800.

If at any time during the course of the project, PennDOT cancels the project or withdraws its request for federal funding PennDOT will so notify the FHWA. The FHWA will notify the other signatories to this LOA, and the ACHP, that the agreement is being terminated. The FHWA, in consultation with those parties, will consider the effects of any project-related activities undertaken prior to project cancellation or withdrawal of the funding request, and the FHWA will assess its responsibilities and obligations pursuant to 36 CFR 800 and determine steps to terminate the LOA.

### **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 PennDOT Chief Counsel

## **APPENDIX E**

### **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 Only Significant as Contributing to a Historic District - The District CRP will work with the project team and consulting parties on a replacement

design that is in keeping with the scale, materials, and massing of the historic (contributing) bridge and may incorporate 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.

## **APPENDIX F**

### **Emergency Procedures**

#### **A. Applicability**

The provisions in Appendix F may be activated by the FHWA consistent with 36 CFR § 800.12 upon the declaration of a state of emergency by the President of the United States and/or the Governor of the Commonwealth of Pennsylvania.

#### **B. Type 1 Emergency Activities**

Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)]. If possible, where there are immediate threats to life or property, the CRP will visit the project site and provide advice on measures to avoid adverse effects, or to minimize or mitigate adverse effects. The CRP shall work closely with the work crews to ensure all reasonable measures are implemented. Documentation shall be provided to FHWA and the SHPO no later than 45 days after the field view.

#### **C. Type 2 Emergency Activities**

Projects limited to the following activities shall be considered exempt from further consideration under Section 106, provided the Activities are limited to the activities specified, are not part of larger undertakings, will not cause any new ground disturbance or extend outside of the existing right-of-way, and are not located within a known historic district, an individually listed property, a known archaeological site, or a National Historic Landmark. Within known historic properties, PennDOT need not consider the effects of Activities that fall into any of the classes listed below, provided that the Activities are limited to the activities specified, are not part of larger undertakings, and repairs are made in-kind:

- 1) Repair of road to pre-disaster conditions: number of lanes; shoulders; medians; curvature; grades; clearances; and side slopes; and no substantial changes in elevation or road width.
- 2) Repair or replacement of traffic control devices such as traffic signs, delineators, pavement markings, ramp and traffic surveillance control systems, and traffic signals.
- 3) Repair or replacement of road lighting.
- 4) Repair or replacement of other road appurtenances, such as curbs, berms, sidewalks and fences.
- 5) Repair or replacement of roadway safety elements, such as barriers, guardrails, and impact-attenuation devices.
- 6) Repair or replacement of culvert systems (structures less than or equal to 8 feet in span length), to include headwalls and wingwalls, without altering the pre-disaster disturbed earth cross-section.

- 7) Placement of fill at bridge piers, wingwalls, and abutments to repair scour.
- 8) Repair or replacement of retaining walls.
- 9) Channel cleaning.
- 10) All other activities necessary to quickly restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities [i.e. temporary roads, bridges, barriers, Maintenance and Protection of Traffic (MPT) devices].

#### D. Type 3 Emergency Activities

For Activities not identified as Type 1 or 2 Exempt Activities, PennDOT shall carry out the following procedures.

##### 1) Identification and Evaluation of Historic Properties

- a) The CRP shall field view the location of the Emergency Activity with the goal of quickly determining which Activities may have an adverse effect on historic properties.
- b) The CRP shall identify and evaluate historic properties within the area of potential effect of individual undertakings conducted under this program.
- c) The area of potential effect on above ground historic properties for all Activities is limited to within 100 feet of the project boundary. The CRP shall evaluate any above ground properties 50 years old or older present within 100 feet of a proposed bridge removal, repair, or replacement for eligibility, if an Activity has the potential to introduce effects not previously in place.
- d) If the area to be impacted by an Emergency Activity has been previously disturbed, based on a field examination by the CRP supported by any appropriate information, no further evaluation to determine presence of National Register-eligible archaeological historic properties (hereinafter archaeological resources) shall be required. If the area to be impacted has not been previously disturbed, the CRP shall either:

(1) Assess the need for further archaeological investigation. In areas subject to potential effect to known significant archaeological resources or in areas where there is a high potential for significant archaeological resources that may be impacted by an Emergency Activity, PennDOT shall conduct an archaeological study to identify archaeological resources,

or,

(2) For temporary construction activities, PennDOT may place geotextile and fill or PennDOT-approved matting over the area to be impacted. No further archaeological study shall be necessary to identify archaeological resources in this area, because no such resources are likely to be affected.

## 2) Assessment of Effect

- a) For each Emergency Activity where historic properties have been identified in the area of potential effect, the CRP shall assess the effects of the Activity on these properties.
- b) The CRP assessment of effects from Activities on Historic Properties shall be made in good faith, based on knowledge available to the CRP at the time of the field assessment, consideration of NR listed Historic Districts and listed properties, and known archaeological sites, as available in the CRGIS, and best professional judgment.
- c) Special provisions for Bridges
  - (1) Any bridge rehabilitation of a non-historic bridge that does not involve a change of elevation or width or removal of decorative features shall be considered to have no effect on historic resources within the APE.
  - (2) When replacement of a non-historic bridge in the area of potential effect of an historic district is considered not to be an adverse effect, design plans shall be submitted to the SHPO for comment.
  - (3) Rehabilitations of historic bridges that are compatible with the historic and architectural qualities of the bridge in terms of scale, massing, color, and materials, and are responsive to the recommended approaches to rehabilitation or new construction set forth in the Secretary's Standards for Rehabilitation shall be considered No Adverse Effect.
  - (4) Rehabilitation of historic bridges that does not meet Secretary's Standards for Rehabilitation shall be considered an adverse effect. Removal and replacement of an extant historic bridge shall be considered an adverse effect. Removal and/or replacement of an historic bridge destroyed or significantly damaged during the event shall be considered a no effect or a no adverse effect.

## 3) Resolution of Adverse Effects

- a) PennDOT, on behalf of FHWA, shall seek ways to avoid or reduce Adverse Effects to historic properties. The manner in which consultation is carried out to resolve effects will depend on whether the undertaking must be implemented within 30 days of the emergency event, or after 30 days but before 180 days of the emergency event.
- b) If National Register eligible archaeology sites are identified in the project area, PennDOT shall consider each of the following options:



- (1) avoidance - PennDOT shall notify the SHPO and appropriate Tribes and Nations (when appropriate) and proceed with the Emergency Activity without further review by the ACHP;
  - (2) protection of the site by placing fill over geotextile - PennDOT shall consult with the SHPO and appropriate Tribes and Nations (when appropriate), and, with concurrence or no objections within the comment period, proceed with the Emergency Activity without further review;
  - (3) site excavation or implementation of an alternative mitigation. If FHWA in consultation with the SHPO and appropriate Tribes and Nations (when appropriate) agrees that a data recovery or alternative mitigation is appropriate, PennDOT shall develop a mitigation implementation plan. PennDOT shall submit the mitigation plan to the SHPO, FHWA, and appropriate Tribes and Nations (when appropriate), and, with concurrence or no objections within the comment period, proceed with implementation of the plan.
- c) FHWA shall ensure that when historic bridges may be adversely affected, a bridge survey form will be completed if none existed previously. Where practical, salvage of significant bridge elements should be considered, and where an interest is demonstrated, salvage undertaken and provided to the Commonwealth or interested local repository identified in consultation with the SHPO.

E. Expedited Consultation on Activities implemented within 30 days.

This section applies only to actions that will be implemented within 30 days after the occurrence of a disaster or emergency event. If the expedited review procedures apply, PennDOT may proceed with the emergency action after completing the following review:

- 1) PennDOT will provide the SHPO, FHWA and appropriate Tribes and Nations with available information about the condition and eligibility of the property, the proposed action, and prudent and feasible measures that would take the effect into account, requesting comments within 7 days. PennDOT may provide this information in writing, or through telephone conversations, Project PATH, or meetings, at its discretion. The SHPO, FHWA, and appropriate Tribes may provide comments to PennDOT within 7 days of receipt of the information, unless PennDOT determines the nature of the emergency action warrants a shorter time period. Any comments received will be taken into account by PennDOT in finalizing any treatment of historic properties.
- 2) Should the SHPO and other parties not comment within 7 days, PennDOT may proceed with the action based on available information.

- 3) If the SHPO, FHWA, or a consulting tribe object to PennDOT's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, PennDOT will consult with the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA will request ACHP's advice. ACHP will advise FHWA within 7 days of receipt of the request, unless FHWA determines the nature of the emergency action warrants a shorter time period.
- 4) FHWA may extend the period to which this Stipulation applies for an additional 30 days by notifying the ACHP, the SHPO, appropriate Tribes and Nations, and PennDOT, providing a justification for the extension.

F. Standard Review Process for Emergency Actions undertaken within 180 Days.

During the period that begins 30 days (or 60 days per Stipulation E.4 above) after the occurrence of the emergency event and normally ending no later than 180 days after the occurrence of the emergency event, consultation shall be expedited according to this section. PennDOT's CRPs are strongly encouraged to consult with all appropriate parties in an informal but expedited manner, utilizing telephone, FAX, Project PATH, and e-mail, in particular on Activities that may have adverse effects and where there are likely to be differences of opinion in the Activity's effect on historic properties.

- 1) PennDOT shall submit documentation of the CRPs' finding of effect to Project PATH and notify the SHPO, FHWA, and appropriate Tribes and Nations.
- 2) The SHPO, FHWA, and appropriate Tribes and Nations shall have 15 days from notice of adequate documentation in which to object to a finding of no historic properties affected or no adverse effect. If no party objects to an adequately documented finding of no historic properties affected or no adverse effect, PennDOT may proceed with the emergency action.
- 3) If PennDOT or FHWA determines that the proposed action may have an adverse effect on historic properties, PennDOT will propose actions to avoid or minimize the adverse effects. PennDOT will document the resolution of Adverse Effects in a Commitment Letter in lieu of an individual Memorandum of Agreement, and provide it concurrently to the SHPO, FHWA, and each appropriate Tribe. The Commitment Letter shall also be posted on Project PATH at that time, soliciting comments. If the SHPO, FHWA, and the appropriate Tribes and Nations provide concurrence to PennDOT prior to 15 days, or, if no objection is received within 15 days of receipt of the Commitment Letter, FHWA may direct PennDOT to proceed with the Commitments. FHWA shall send a copy to the ACHP. PennDOT shall post the Letter prior to construction.
- 4) For resolution of adverse effects to archaeological historic properties, archaeological data recovery may be a solution. Upon completion of fieldwork for archaeological data recovery excavations, PennDOT will provide an opportunity to meet on-site within 2 working days with the SHPO, FHWA, and appropriate Tribes and Nations

to consider whether additional fieldwork is necessary, or whether PennDOT may proceed with the Emergency Activity. FHWA shall ensure that a management summary is provided to the consulting parties and that notes documenting any field discussions are submitted to the parties prior to FHWA's determination that the archaeological fieldwork has been completed. FHWA shall ensure that a report of investigations consistent with the Pennsylvania PA SHPO's current Guidelines for Archaeological Investigations shall be submitted to the SHPO for review and concurrence within 1 year of the completion of fieldwork.