



Lessons Learned in Pennsylvania

Note: the summit logo was taken directly from a petroglyph panel on the Allegheny River in Pennsylvania. The image is Pre-Contact, of unknown age or tribal affiliation.

PROCEEDINGS OF THE
FHWA PENNSYLVANIA DIVISION INTERTRIBAL SUMMIT

SEPTEMBER 10-12, 2003
Harrisburg, Pennsylvania

Hosted by:
The Federal Highway Administration, Pennsylvania Division

With Assistance from:
The Pennsylvania Department of Transportation
The Pennsylvania Historical and Museum Commission

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Notes to the Reader



Both the 2003 Intertribal Summit, and this report, have focused on the obligations FHWA has to consult with federally recognized tribes under Section 106 of the National Historic Preservation Act of 1966. These obligations are just a small part of the very special relationship between those sovereign tribes and the government of the United States codified in innumerable treaties and federal laws. Readers should understand that we recognize the importance of that larger relationship, and acknowledge that it is the foundation that supports our consultations under Section 106.

For the descendants of the original inhabitants of North America, the use of the terms Native American, Indian, Tribe and Nation can carry some cultural, and sometimes decidedly negative, “baggage”. The use of the term Indian is not widely accepted, and is considered pejorative by some people. In this publication, the authors have chosen to use the terms Tribe, Nation and Native American interchangeably, since they are, at least, commonly understood terms. Readers should rest assured we mean no disrespect.



PREFACE

The Pennsylvania Division of the Federal Highway Administration (FHWA), in cooperation with the Pennsylvania Department of Transportation (PennDOT), hosted its first-ever Intertribal Summit meeting on Section 106 issues September 10th, 11th and 12th, 2003 in Harrisburg. The summit was the result of a complex, challenging, and ultimately successful planning effort that took about six months, more than \$40,000.00, and a great many staff hours to pull together. Late in the evening of September the 12th, after the summit concluded and many of the participants had begun the long journey home, a small, tired, and happy group of summit planners and attendees found themselves in a local restaurant, decompressing from the rigors of the three-day long meeting and the months of preparation. In a sense, this document was born in the lively and earnest (not to mention exhausted) discourse that swirled around the table. In the course of planning and conducting the Pennsylvania Intertribal Summit, we borrowed some ideas, invented others, made more than our share of mistakes, and had our share of triumphs as well. The dinner-table observations and analysis went on well into the evening, and in the end, we knew we should share the lessons we learned in Pennsylvania with the rest of the transportation community.

As in any undertaking of this scale, there are more people to thank than we can possibly list or even remember. That said, we would like to extend our special gratitude to some key individuals, including:

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Most especially, all of the tribal representatives who undertook the long journey to Pennsylvania.

Formal consultations with federally recognized Native American tribes under Section 106 of the National Historic Preservation Act (NHPA) are a significant undertaking and an important responsibility. The success or failure of those consultations can have dramatic effects on the efforts of a Federal Highway

Administration State Division, and its state-agency partners, to successfully care for the past and deliver transportation projects. The consultative partnership between the tribes and the FHWA Divisions also has profound implications for the cultural heritage and identity of the affected tribes. There is a lot at stake for everyone. We hope this report will help provide other states with some of the tools to get that consultative partnership off on a solid footing.

Karyn Vandervoort, FHWA
Joe Baker, PENNDOT

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I. WHY HOLD A SUMMIT?

A. 36CFR 800: WHAT THE REGULATIONS SAY ABOUT TRIBAL CONSULTATION

The most obvious reason for a federal agency to hold a tribal summit lies in the requirements for federal agency consultation with Native American tribes codified in the Advisory Council on Historic Preservation's (ACHP) revised regulations for the implementation of Section 106 of the National Historic Preservation Act (NHPA) (36CFR800, effective January 11th, 2001). Since those regulations went into effect relatively recently, many federal agencies (including many FHWA State Division offices) are in the early stages of implementing them. Obviously the regulations do not mandate a summit meeting, but they do mandate substantive consultation on undertakings that have the potential to affect properties of cultural and historic significance to resident or formerly resident federally recognized Native American tribes. While the requirements differ dramatically for projects on and off reservation land (see 36CFR800.2(c)(2)(i)&(ii)) the requirements apply to all such undertakings.

From 36 CFR 800.2(c) (2) (ii). *Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.*

B. NEPA AND PUBLIC INVOLVEMENT



The National Environmental Policy Act (NEPA) is a law that applies to federal agencies. It maps out a procedure for arriving at an informed decision for any federal-aid undertaking. At the heart of the process are proactive public involvement and full public disclosure. The process involves striking a balance among many different factors, including mobility, the economy, health, environmental protection, community and neighborhood preservation, and quality of life. The process is detailed and involves weighing many considerations from many sources, such as regulatory resource agencies, the public, and tribes, in order to determine the best possible decision on proposed projects. Like Section 106, the requirements of NEPA imply consultation with federally recognized tribes as a subset of the overall community.

C. THE FEDERALLY RECOGNIZED TRIBES AND FHWA (REPRESENTING THE FEDERAL GOVERNMENT)

Consultation will require the development of a mutually agreeable process as well as regular, open, and dependable lines of communication between tribal representatives and agency staff, including state DOT staff. Most FHWA State Division offices delegate a variety of day-to-day tasks to state DOT staff. Consequently the DOT staff may be actively involved in tribal consultation.

Federally recognized tribes consulted in the course of federal undertakings in Pennsylvania include representatives of the Delaware/Lenape, Six Nations, and Shawnee people. All of these tribes have historical connections to what is now Pennsylvania and they are represented by fifteen federally recognized tribes residing in New York, Wisconsin, and Oklahoma. Complete contact information for those fifteen tribes can be found in Appendix A.

In most states, a number of federally recognized tribes have ancestral connections to the land and to archaeological sites and traditional cultural properties that can be affected by federal projects. Given the involvement of what could be a substantial number of “players”, potentially based in a number of different locations and states, it makes sense to bring all of the affected tribes and the federal and state agency staff together in the same place at the same time. A summit can provide both the agencies and all the interested tribes an opportunity to build a solid foundation for a future consultative relationship.

D. TOWARD BEGINNING AND CONTINUING EFFECTIVE COMMUNICATION AND CONSULTATION



The relationship between federal agencies like FHWA and federally recognized tribes is unique. The tribes are recognized as sovereign nations living within the boundaries of the United States, and they have a direct, government-to-government relationship with the federal government and its agencies. That relationship is defined by numerous treaties between the federal government and the tribes. Particularly in the eastern states, this relationship is still evolving and issues of mutual concern and interest are still being defined. The issue of specific territorial and chronological affiliations of tribes to geographic regions and prehistoric cultures in many states is not well defined. These issues have profound implications for which tribes are consulted on which projects and for the curation, treatment and study of Native American artifacts and archaeological sites.

In short, a tribal summit can help prepare the path those federal agencies and federally recognized tribes must travel together. That path can lead to effective and streamlined consultation, sound decision making, efficient project delivery, and solid stewardship of the past; destinations we all want to reach.

“...everyone agreed that their expectation for the Pennsylvania Intertribal Summit was primarily two-way, mutual education “

Minutes of the first summit planning meeting

Set goals and expectations for the summit to help frame the program. Do you want to end with an agreement (Memorandum of Understanding) between the federal government and the tribes on how to consult? Do you want the summit to be strictly informational? Are you holding the summit for introductory purposes only?

What To Expect From a Summit

There are a number of important goals that can be reached at an inaugural summit:

- *A summit can provide an opportunity to **define and shape mutual concerns** and interests, and identify opportunities to streamline and strengthen the consultative process early in its development.*
- *A summit can afford an important opportunity to **cultivate the person-to-person relationships and trust** between FHWA and transportation department management and staff and tribal leaders and members that will facilitate effective and efficient consultation.*
- *A summit can afford the tribes an opportunity to **familiarize themselves with the role of FHWA** and with FHWA and transportation department procedures and to help them identify and prioritize the projects and processes that concern or interest them. Concurrently, the summit also **allows FHWA and state DOT staff to familiarize themselves with individual tribal histories, organizations, concerns, staffing, procedures, and priorities.***
- *A summit can provide a forum for an **exchange of views and information** about homelands, and can help define a “road map” for curation and treatment of artifacts.*

II. SHORT HISTORY OF TRIBAL TRANSPORTATION SUMMITS

Pennsylvania has followed the lead of other states in conducting a tribal summit. In sincere thanks to these states, we acknowledge their summits with a brief description of how they achieved success.



An interesting side note: Pennsylvania has no tribal lands, unlike the other states that have held tribal summits. In this respect, Pennsylvania's experience is somewhat unique.



A. IOWA

The Iowa Division, Federal Highway Administration (FHWA) and Iowa Department of Transportation (Iowa DOT) held the first State of Iowa Tribal Summit on Historic Preservation and Transportation in May 2001. Tribal representatives with both current and historic interests in the state were invited to the summit along with representatives from the Iowa FHWA and DOT.

The three-day summit succeeded in introducing tribal and agency leaders to each other and in laying the groundwork for future agreements and meetings. Plans to draft an MOU template between the agencies and tailored to each tribe were begun. Finally, some basic education on both sides was accomplished in understanding some of the tribes' interests and for the tribes to better understand the transportation design process and the stages of consultation.

Some of the recommendations of the summit planners for future summits were to:

- Ensure that agency officials of comparable rank to the tribal leaders were invited.
- Balance the number of agency participants and tribal participants at the conference.
- Include a tribal representative in the summit planning group as well as representatives of the SHPO, state DOT, state division of FHWA, state museum, and Indian Advisory Committee when possible.

A follow-up workshop to the summit was held in October 2001 which included field visits to open archaeological sites. A total of 29 people participated in the State of Iowa Tribal Consultation Workshop. The first day of this two-day workshop was devoted to describing the agencies' process of identifying and mitigating archaeological sites in the state. The second day was spent on field visits to two archaeological data recovery investigations.

Details of both the initial summit and follow-up workshop were summarized in the final report *Proceedings of the State of Iowa Tribal Summit on Historic Preservation and Transportation*. A report on the initiatives and recommendations of the summit planners can also be found online in a report titled *Iowa Tribal Consultation Process* at www.ctre.iastate.edu/reports/tribal.pdf.

The FHWA, Iowa Division also published a webpage on their efforts at <http://environment.fhwa.dot.gov/strmlng/newsletters/jul02nl.htm>.

B NEW MEXICO

The first New Mexico Tribal/State Transportation Summit was held in October 1999 at the initial suggestion of the Eight Northern Indian Pueblos Council, Inc. who wished to discuss transportation concerns with the state. An executive planning committee was established which included a number of tribal and agency representatives.

The goals of the summit as outlined by the committee were to define and improve government-to-government communication between the tribes and the agencies and to establish and clarify transportation agreements and protocol. A report of the 1999 Pre-Summit and Summit proceedings entitled *Stepping Stones: A Process Toward Communication and Cooperation, Summary Document of the New Mexico Tribal /State Transportation Summit and Pre-Summit* can be found at www.trex-center.org/summit.asp.

Following the summit, an action committee was established to continue the work and thereafter several agreements were signed by the tribal and agency parties working toward joint study and consultation.

A conference followed the next year entitled *Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments*. It was held on October 19-21, 2000, in Albuquerque. This event addressed public involvement, planning, and cooperation between the tribes and agencies. The conference included presentations on case studies of tribal and agency interaction and federal perspectives on consultation and protocol. The proceedings of this summit, entitled *Conference on Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments Proceedings*, can also be found at www.trex-center.org/summit.asp. For more information about these meetings contact trex@unm.edu.

C IDAHO

The state of Idaho held an inaugural State and Tribal Government Transportation Summit in July 2002. The two-day summit included presentations and discussion on transportation programs in the state, funding opportunities for tribes in transportation, and strengthening government-to-government communication. The second day also included a strategic planning session for future collaboration between the tribal governments and the state of Idaho. Details of the meeting can be found online at www2.state.id.us/itd/Board/minutes/min200207spec.htm.

D MINNESOTA

The governor of Minnesota declared April 1, 2002 to be “Tribes and Transportation Day”. The *Government to Government Transportation Accord* was signed on that day by the Minnesota Division of FHWA, the Minnesota DOT, and 11 tribes. The first Tribes and Transportation Summit was also held in early April 2002. A second Tribes and Transportation Summit was held in 2003. These summits were developed to strengthen government-to-government partnerships, as well as to jointly educate the tribes and agencies about the transportation process and tribal needs in the state.

The *Minnesota Tribes and Transportation Handbook: An Online Resource Guide* was created by the Minnesota DOT after the 2002 summit. This guide provides information on the tribes within Minnesota, and information on the transportation planning and design process for the state. Information on Minnesota DOT government-to-government partnership with the tribes, consultation policies, and the online handbook can be found at <http://www.dot.state.mn.us/mntribes/>.

E WASHINGTON

Since 1994, Washington State DOT (WSDOT) has held an annual Tribal/WSDOT Transportation meeting to discuss transportation issues of mutual concern. At the conclusion of the meetings, advisory groups are formed to discuss and explore solutions to some of the issues identified at the meetings. Some of the issues that have come up include educating the tribes about ISTEA and providing the tribes with more representation in the planning process.

WSDOT established a Tribal Liaison Office in 2001 which is responsible for assisting tribes and the department with implementing effective government-to-government relations.

Washington State created the *Centennial Accord Plan* in accordance with the 1989 *Centennial Accord* and the 1999 *Centennial Accord Implementation Guidelines* to ensure effective government-to-government relations between the state and resident tribes. The *Centennial Accord* mandated that each state agency must have a procedure to

implement effective government-to-government communications. The WSDOT *Centennial Accord Plan* includes the WSDOT Tribal Consultation Policy (adopted by the Transportation Commission on February 19, 2003), a Dispute Resolution Policy and detailed descriptions of the programs, services, and funding each of the WSDOT divisions and offices offer to the tribes. In keeping with the *Centennial Accord Implementation Guidelines*, WSDOT will evaluate and annually update the plan. This information and .pdf versions of the Accord Plan and Tribal Consultation Policy can be found at www.wsdot.wa.gov/tribal/centennial_accord.htm.

III. PENNSYLVANIA'S TRIBAL SUMMIT: LESSONS LEARNED



The intent of this section is to provide friendly advice and insights for states that are thinking about planning and conducting a tribal summit. The advice is based on the experience in Pennsylvania and is not reflective of policy from PennDOT or FHWA.

While preliminary discussions began in the winter of 2003, the idea for a Pennsylvania Intertribal Summit jelled at the March 2003 Byways to the Past Conference, PennDOT's annual conference on transportation and historic preservation. A substantial session on tribal consultation was held at the Byways conference, and representatives from three federally recognized tribes with ancestral ties to Pennsylvania gave presentations and joined a roundtable discussion with a number of transportation, preservation, and legal professionals. The result was a well attended, lively and useful discussion that made a big and positive impression on all the conference attendees. By April, a planning committee of PennDOT and FHWA staff had formed, and a decision was reached to explore the possibility of an Intertribal Summit to be held sometime in the fall of 2003. Of course, this exploration began with a search for funding.



A FUNDING



Any search for funding begins with an estimated budget. In our case, we knew our major expenditures would include travel and lodging for tribal representatives, a suitable venue for the summit, and on-site meals to allow for working lunches and an opening and closing dinner. Other expenses included consultant support for logistics, minutes of the summit and help with this report, and some transportation costs associated with the tours.

We estimated our costs at about \$100,000 for the entire summit, which would account for travel for numerous tribal representatives, and PennDOT and FHWA staff. The majority of the expenses were targeted for travel and meals. Our preliminary and final budgets are available in Appendix A of this report.

Due to the 2003 state-level budget crisis in Pennsylvania, PennDOT was unable to contribute to the costs of the summit beyond assigning staff to help with logistics and organization. Consequently all of the up-front costs for the summit were borne by FHWA, and all expenditures had to meet FHWA guidelines on allowable expenditures.

The timing of the summit planning coincided fortuitously with an announcement of funds available to assist FHWA State Division offices with streamlining initiatives that were reflective of their Vital Few goals (performance goals of the FHWA). The Division offices competed by nominating projects that could expend the funding prior to September 30. The FHWA State Division office applied for the funding, and was awarded \$95,000. Planning was in full swing upon this announcement and within weeks a venue, meals and transportation arrangements were accomplished. In a short time, but not before the arrangements were made, it was discovered that the awarded money was not free of FHWA procurement requirements: there were significant strings attached. Listed below are some pointers for Division offices that chose to contribute federal-aid towards a tribal summit:

- Purchase Orders (PO) can be used to acquire the services of facilitators/consultants, the state DOT, caterer (minus any food beyond breaks), and transportation.
- Federal-aid can not cover the cost of meals for non-traveling, non-FHWA representatives. Only light snacks and beverages can be purchased to be used during the event.

Advice on using Federal-aid for a Summit:

Three or more sources for the services must be documented in the PO to indicate that the chosen recipient is most advantageous to the government; normally the lowest cost unless there is something unique that no other source could provide.

The decision not to pay for meals changed the entire summit program since we were no longer able to have meals together as originally planned. The sharing of meals is an important, almost ceremonial event, for many Native American cultures. At the eleventh hour, PENNDOT staff organized a pot-luck dinner in their building cafeteria, which was within walking distance from the venue. PENNDOT, PHMC and FHWA staff donated home-made food for the event. In hindsight this was one of the successes of the entire summit since it allowed personal interaction in a comfortable atmosphere.

Gift giving is an important gesture in many Native American cultures. The planners of the summit recognized this importance and personally paid for gifts to all tribal representatives.

Although FHWA guidance is strictly interpreted that no funding can be spent on travel for tribes or to tribes unless it is for a specific project, we discovered that the tribal representatives for our summit could be considered Invitational Guests. As such, each tribal representative became a temporary federal employee and could be reimbursed for travel expenses. Instruction sheets and forms were mailed to the representatives explicitly describing what could and could not be reimbursed. The concept of reimbursement, compared to upfront funding, was explained. Since they were temporary “federal employees”, FHWA was borne with organizing the travel plans, including contract plane tickets. [Instructional information and forms are attached to this report in Appendix B.](#)

- Federal-aid can not be spent on gifts.
- Federal-aid can be used to reimburse tribal representatives travel expenses.



There was no more important lesson imparted to the organizers of the summit than the lengthy and rigid list of things you can and cannot do with federal-aid. Since none of the summit planners had a lot of fiscal or purchasing training or experience, we had a few surprises and revelations fairly late in the planning process that caused some frantic restructuring of the logistics. There may be similar guidelines and regulations for the use of state funds as well. Familiarize yourself with the applicable purchasing regulations and guidelines, and talk with your purchasing and fiscal staff to be certain that the specific goods and services you need can be procured with federal funds. In fact, it may be a good idea to have someone from purchasing or fiscal offices on the planning committee.



B PLANNING AND LOGISTICS

In a sense, the planning for this summit began in 2002 when FHWA and PennDOT staff met to begin mapping strategy for cultural resource management and transportation projects over the next several years. Those early meetings identified tribal consultation as an area to focus on given the then-recent implementation of the revised Section 106 regulations. That decision led to a telephone canvass of the

Frequent contact with all the tribes can be cumbersome, but stay patient and attempt to contact all of them regularly.

Initial contact with the tribes should come from FHWA (as a federal government representative for government-to-government consultation). With the tribe's approval, the state DOT can initiate future contacts.

Stay cognizant of protocols and what is considered acceptable behavior by the tribes (See Appendix C).

fifteen federally recognized tribes with ancestral ties to the Commonwealth conducted by Cathy Glidden of FHWA Headquarters. The canvass found near-unanimous support for a summit among the tribes. The results of the canvass led to the 2003 Byways Conference session on tribal consultation, and ultimately to the decision to hold the Intertribal Summit. It also led to FHWA Pennsylvania Division and PennDOT staff attendance at a two-

day training session hosted by the Advisory Council and the Six Nations of the Haudenosaunee at the Onondaga Council House near Syracuse New York in September of 2002. Like the Byways session, this training was invaluable, providing the transportation staff with a basic understanding of the organization, tradition, values and concerns of the Six Nations. Our staff members were made to feel welcome and comfortable at Onondaga, resulting in a relaxed and productive

exchange of views and experiences. We took this lesson to heart as planning for the Pennsylvania Intertribal Summit began.

Involve the tribes early in the planning process. Do not assume you know what they want or need to hear from you. It's their summit too!

Establish a small group of summit planners. A small group is more apt to be able to meet more frequently.

Summit planning began in April 2003 with the appointment of a joint FHWA and PennDOT planning committee. In retrospect, it would have perhaps been helpful and more inclusive to have had tribal representation on the planning committee. Ultimately, the tribes were not approached about participating in the planning simply because there are no federally recognized tribes resident in Pennsylvania, precluding regular attendance at planning meetings.

At the first planning meeting, the committee established goals and expectations for the summit that would guide our work. In general all the participants agreed on their expectations for the proposed summit:

- Nobody was looking for signed agreements as a product of this initial get together,
- Everyone wanted to understand the expectations each tribe had of the transportation community in Pennsylvania,
- We needed to understand what kinds of staff, programs, and facilities each tribe has in place, and how each tribe wants the transportation community to interact with them,
- The transportation community wanted a chance to introduce the tribes to our NEPA and Section 106 processes and environmental/cultural resources staff, and
- We thought it was necessary to showcase a number of example projects and programs for their input.

Committee members were assigned primary responsibilities for different tasks such as: coordinating the venue, developing the summit program, coordinating travel arrangements, and tracking the budget. Responsible members worked independently or in cooperation with one or two other members, and then reported on their progress at full committee meetings. The committee met, minimally, every month, and in the last six weeks leading up to the summit, met every two weeks.

*Make assignments.
Delegation is not a bad thing!*

Meet frequently.

*Develop a follow-up item list
and action plan to track
assignments.*

Some of the most important and complex logistical considerations were travel arrangements, lodging and per diem for tribal representatives. These were the single largest budget items for the summit. To accommodate the logistical challenge of transporting representatives from up to fifteen tribes from three different states to Pennsylvania, special forms were developed to be completed by each tribal representative (all of our forms are appended to this report) prior to their receiving authorization to travel.

Foresee logistical problems and avoid them. Problems with travel arrangements could create an awkward beginning for a summit.

Create registration forms so attendees can easily reply with ALL necessary information for reimbursement of expenses.

Check with FHWA procurement policies BEFORE committing to federal-aid funding.

To comply with FHWA procurement policies, all airline tickets were purchased by FHWA Pennsylvania and were then mailed to the representatives. A block of rooms was reserved at the federal government rate in a downtown hotel, and a shuttle was engaged to get the participants to and from the meeting venue a few blocks away. A PennDOT staff member was detailed as an airport shuttle for some of the tribal representatives; others simply used the hotel shuttle from the Harrisburg airport. Bus transportation was arranged for a field trip, and shuttles were arranged for getting the

representatives back to the airport after the summit.



Possibly the best piece of advice we can give to those contemplating a summit is to set reasonable expectations. Remember, this is an initial get-together among agencies and individuals who may have no or very little experience with each other. Furthermore few, if any, tribal attendees will have the necessary authority to formally agree to anything without consulting tribal governments or elders. Any attendee expecting to walk out of such a meeting with signed Memoranda of Agreement, or formal and explicit agreed-upon consultation procedures for all kinds of transportation projects is going to be disappointed. More reasonable goals include spelling out exactly who the contacts are at both the tribes and the agencies for various kinds of communications, exchanging basic information on organization, areas of concern and needs and capabilities at the tribes and agencies, and agreeing on topics for future discussion including the ways and means to facilitate those discussions.



C DEVELOPING THE PROGRAM

Fortunately, Pennsylvania was not the first state to hold a tribal summit, so we did not have to invent everything here. We had excellent models to base our program on (see Summit History section above). We borrowed much of our program structure from the Iowa Summit: i.e. a two- to three-day event that would combine time spent in meetings and discussions with time spent on field trips. Unlike Iowa, we elected not to take a field trip to a specific transportation project, simply because we had no good candidates in the vicinity of Harrisburg, the site of the summit. Instead we opted for meetings and discussions, broken up with a couple of field trips to nearby sites of considerable significance to all of the invited tribes: the Pennsylvania State Archives collection of original treaty documents and the site of the Carlisle Indian Industrial School, an important and complex experience for many Native American families at the turn of the century.

Contract a professional facilitator(s) with experience with Tribal Summits and both the Native American and Transportation communities.

The ACHP can assist in the planning, contacts and facilitation.

Rely on past successes before embarking in uncharted territory. Consult with people who had successful summits.

Protocols are important (see Appendix C)

Caucuses as part of the program allow time for the nations as well as the transportation community to openly discuss issues.

Our program topics and presentations were influenced and guided by our professional facilitator, Ron Hall - the director of the Tribal Technical Assistance Program (TTAP) at Colorado State University, and one of the facilitators for the Iowa Summit. One of the most successful approaches employed in Iowa was initially breaking the meeting into separate

caucuses for the Native American and transportation communities. The separation allowed for a more open exchange of ideas and opinions, and when the two caucuses came together in Iowa, the degree of independent agreement on a variety of points was quite striking. We adopted Ron's approach for the Pennsylvania program, and in fact contracted with him to help facilitate the Pennsylvania Intertribal Summit.

We also identified topics for informational kiosks to be set up at the summit, and for some introductory presentations before the opening reception. These focused on the basics of NEPA, the Section 106 regulations, the Cultural Resources Management Program at PennDOT, Pennsylvania's Minor Projects Programmatic Agreement, and Highway Project

Have information available for casual consumption. Be wary of providing too much information at once. Have information for participants to take home.

Development. Bearing in mind our goal of mutual education, the idea was to provide at least the rudiments of how we do things in Pennsylvania for our visitors.

Allow plenty of time. Do not rush the outcome; let it evolve at a pace comfortable to the tribes and the transportation community. Don't be disappointed if the agenda isn't followed once the program begins.

The final program agenda and schedule for the two and a half day summit is appended to this document. Some observations about its relative strengths and weaknesses are included in the final section of this report.

Since an inaugural summit is really the first, formal contact between the sovereign nations and a segment of the federal and state government, it is important that agency and political executives attend at least some of the summit, particularly if tribal executives and leaders are in attendance. While Pennsylvania's governor could not attend due to a scheduling conflict, both the FHWA State Division Administrator and the Pennsylvania Secretary of Transportation did attend, and their attendance helped establish the importance and significance of the consultative partnership between the tribes and the state and federal agencies.

The Pennsylvania Intertribal Summit was attended by ten FHWA Pennsylvania Division environmental staff members and managers, and twenty-eight PennDOT environmental staffers and managers. Observers were invited from the State Historic Preservation Office and the State Museum, and from other FHWA State Divisions, from the FHWA Washington Office, the FHWA Baltimore Resource Center, the FHWA Federal Lands Office, and the Advisory Council on Historic Preservation.

Modern Native American tribes with aboriginal ties to what is now Pennsylvania include the Delaware/Lenape tribes, the Shawnee, and the Six Nations of the Haudenosaunee (Seneca, Cayuga, Onondaga, Oneida, Mohawk and Tuscarora). There are currently fifteen federally recognized tribes that represent these First Nations, and representatives from ten of them attended. The other five all expressed an interest in attending but had scheduling conflicts which prevented it.

We intentionally did not invite attendees or observers from non-federally recognized groups to the summit, nor did we invite representatives of any federal agencies other than FHWA, with the exception of the Advisory Council. The Section 106 regulations define a special role for consultation with federally recognized tribes. In our telephone canvassing with the federally recognized tribes, the exclusion of unrecognized groups with unsubstantiated claims of tribal affiliation was identified as an important pre-requisite for a successful summit.

While the regulations do apply to all federal agencies, and while some of those agencies (particularly the Corps of Engineers) play a role in transportation projects, we decided early-on to invite only agencies with primary roles and responsibilities in transportation projects in Pennsylvania. We felt that limiting the scope and size of the summit to transportation-only agencies and discussions would be more than enough ground to cover in three days!

D. THE VENUE

Our goals for the summit dictated a venue that was conducive to a relaxed and productive exchange of information, views and suggestions. Since we anticipated approximately 75 to 80 attendees, it had to be large enough to accommodate the crowd. Since Harrisburg is situated along the banks of Pennsylvania's largest river, the Susquehanna, and since the river has a close and important historical association with all of the visiting tribes, we felt that a venue that featured the river was, if not indispensable, at least desirable.



A comfortable setting is preferable over a sterile atmosphere of a conference room.

We selected a beautiful contributing building to the Harrisburg Downtown Historic District, the Harrisburg Civic Club. It has a large second floor ballroom with a stair lift for disability access, three large public rooms on the ground floor, a long, covered wrap-around porch, and an open garden area, all available for meetings and discussions. It is situated directly on the Harrisburg waterfront. In short, the Civic Club met all of our criteria for a venue. It also had an in-house caterer to provide break refreshments.



E. FEEDING THE MULTITUDES

Meal arrangements are particularly important in a multi-day meeting format. A great deal of useful and important interaction can and does take place over meals. Shared meals also help to make visitors feel welcome and relaxed. While we were able to provide break refreshments for the summit, shared on-site meals were not an option due to federal purchasing guidelines. Fortunately

downtown Harrisburg has a great many restaurants in close proximity to the summit venue, and the attendees had many good options for meals. Since we felt at least one communal gathering was important, we made a decision to host a “pot luck” dinner for all the summit attendees. An e-mail request to all the local agency staff attending the summit met with such an enthusiastic response that we had considerably more than enough food to feed all of the attendees. The result was a relaxed, informal, and delicious meal that brought all of the attendees together at the end of the second day.

F. THE CAUCUSES AND DISCUSSIONS

The heart of the Pennsylvania Intertribal Summit was the series of group caucuses and discussions that took up most of September 11th and half of September 12th. Following introductions, an opening benediction from the tribal representatives, and some introductory remarks by FHWA, the Advisory Council and Ron Hall, the summit broke into two separate caucuses, one for tribal representatives and one for transportation and historic preservation

If the tribes agree, separate the group into tribal and transportation caucuses.

Allow opportunities for individual representatives to be heard and not subsumed into the group.

Clearly explain and define transportation terminology and acronyms, procedures and regulations. Minimize the use of jargon.

attendees. The tribal caucus was facilitated by Ron Hall and the transportation caucus by Valerie Hauser of ACHP. The same set of questions was posed to each group, and all of the responses were carefully recorded by the facilitators. In the mid afternoon of the 11th, the entire summit re-convened and the two sets of responses were compared. There were numerous areas of agreement and shared goals, as well as some distinct differences (see the appended minutes for details). The remainder of the summit featured discussions on how to proceed toward common goals and resolve group differences.



In general this was a successful approach, particularly for the tribal representatives. The caucuses allowed for a more open and unrestrained airing of opinions, concerns and ideas. Since the summit, some tribal representatives have voiced a concern that the caucus approach tended to subsume individual tribal concerns and positions beneath those of the group. The same could probably be said of the diverse group of engineers, archaeologists, planners, and managers from a variety of federal and state agencies in the transportation caucus. That said, the same limitations would have been present for all participants in a single group context. In the end, the caucuses successfully identified most of the concerns and opinions held by both the Native American and transportation communities, and did so in ways that might have proved awkward and difficult in the context of a single, large meeting.

The morning of September 12th featured a presentation of PennDOT's and the Pennsylvania Historical and Museum Commission's Cultural Resources Geographic Information System (CRGIS). The CRGIS maps the locations of nearly 20,000 archaeological sites and over 100,000 historic buildings and districts, and contains data on their chronology, environmental setting, integrity, and other parameters, including the locations of current and proposed transportation projects. It is available as a password-protected, internet-based application. It obviously has enormous potential for cost-effective and efficient project consultation with tribes residing far from Pennsylvania. The tribal representatives received this presentation with great interest.



To reiterate some earlier remarks, allowing for separate meeting times for the Native American and transportation attendees contributes to an effective and productive program. So does the use of knowledgeable and experienced facilitators. Workshops and presentations that explain programs, procedures, and points of view provide common language and understanding for all the participants. If we had it to do over again, we would probably have asked for some basic, introductory presentations on the history, culture, organization, and concerns of the attending tribes as part of the first day's program. To be honest, some of the best and most productive parts of the Pennsylvania Intertribal Summit took place at the potluck dinner, during the tours, and over lunch and other breaks. Since many of us had never met before, these less-formal parts of the program allowed all the attendees to establish contacts and exchange ideas that will continue to grow over time. Effective communication depends on trust, and trust can only come with familiarity and recognition of common ground.



G. TOURS

Our program included two tours. While neither was directly related to transportation issues, they were of considerable importance to our guests. During the evening of September 11th a tour was arranged of the original deed and land documents held at the Pennsylvania State Archives. These are the Commonwealth's copies of the primarily 18th century agreements that deeded land to the Pennsylvania Colony from the resident Native American tribes in the region. They bear the signatures of many important Colonial and Native American leaders from the period, and document the history of formal relations between the Native American and Euro-American communities in Pennsylvania. In the afternoon of September the 12th, we toured the site of the Carlisle Indian Industrial School (1879 to 1918). The Carlisle School was the first of a series of schools dedicated to the assimilation of Native Americans into Euro-American society. It has a complex and emotional significance for many Native Americans, and several of our visiting representatives had ancestors who attended Carlisle.

Include tours of culturally significant sites.



Like the potluck dinner, these tours were very successful parts of the summit program. Since none of the tribes we consult with are currently resident in the Commonwealth, this was the first opportunity for almost all of the representatives to see the land documents or the Carlisle School. Both tours were led by knowledgeable experts who allowed ample time for the many questions posed by our visitors, and both were something of an education for attendees from the transportation community who were exposed to some of the complicated and often unhappy historic record of relations between the Native American and Euro-American communities. During the planning stages of the summit there was some concern that the negative emotions that attend that history might not contribute positively to the summit, but in practice nothing could have been further from the truth. The tours served to remind our visitors of their long and important connections to the Commonwealth, and of the significant role they play in the stewardship of their own past.



H. THE FUTURE



At the end of the group meetings and discussions on September the 12th, everyone agreed that the summit was a good and successful start to a relationship that still has a long way to go. We decided that a follow up meeting in six to eight months was an important second step down that path. We also agreed that the draft procedures for tribal consultation currently in use at PennDOT

would be the primary subject of that follow up meeting. Both the tribal and transportation caucuses had listed some priorities for future discussions, summarized in the appended minutes, that range from defining historic territories and areas of interest by the tribes, to opportunities for streamlining the consultative process with the CRGIS, to the education of the transportation community in the history, traditions and organizations of the tribes. Clearly all of these laudable goals will take some time, resources, and effort to achieve, but they're all critical to the wise stewardship of archaeological and cultural resources and the efficient and cost-effective delivery of transportation projects. As this report goes to press, PennDOT and FHWA have assigned staff and consultants to begin the process of following up on the 2003 Intertribal Summit and planning and consultation with the tribes proceeds as we continue together down the trail we blazed in Harrisburg last September.

Mutually agree to obtainable future actions.



When the summit is over, effective communication and idea sharing is not; in fact, it's just beginning. It's important for all the participants to stay engaged and in touch. Electronic list-serves, phone contacts, newsletters, follow-up meetings, and other means of regular and open discussion will form the basis of future agreements and cooperation.

In Pennsylvania and, we suspect, in most other states, effective tribal consultation on Section 106 issues happens through a partnership between the federal and state agencies involved. The formal responsibility for consultation, and the important federal role in government-to-government relations, belongs to the FHWA State Division. PennDOT, primarily through its cadre of cultural resource professionals working out of district offices across the state, assists FHWA in discharging its responsibilities. The transmittal of notification forms on pending projects, telephone discussions, field views, and other kinds of project-specific, day-to-day communication with tribal representatives is normally handled by these PennDOT staffers. The recommendations made during the course of these activities by PennDOT staff require the approval and imprimatur of FHWA to comply with Section 106 and to fulfill the government-to-government relationship between the tribes and the federal government. The close interaction between FHWA and state DOTs in the course of tribal consultation means that a careful, efficient set of procedures which define the roles and responsibilities of the two agencies must be in place and agreed to by the consulting tribes if effective and meaningful tribal consultation is going to take place. PennDOT has developed draft procedures that are currently under review by the tribes we consult with and are included in the appendices.





2003 Pennsylvania Intertribal Summit attendees

More Photos of the 2003 Pennsylvania Intertribal Summit



APPENDIX A: USEFUL CONTACTS AND RESOURCES

1. FHWA

The FHWA website on Native American Coordination including information about federal programs, resources for consultation, and *A Citizen's Guide to Transportation Decisionmaking* can be found at: www.fhwa.dot.gov/environment/natvamrc.

Mary Ann Naber, Federal Preservation
Officer
FHWA Archaeology and Historic
Preservation Program
Office of Project Development &
Environmental Review
HEPE, Room 3222
400 7th Street, S.W.
Washington, DC 20590
Phone: (202) 366-2060
Email: MaryAnn.Naber@fhwa.dot.gov

Tim Penney, Native American Program
Coordinator
Federal Highway Administration
400 7th Street S.W. Room 3301
Washington, DC 20590
Phone: (202) 366-2698
Email: tim.penney@fhwa.dot.gov

Paul Tufts, Environmental Program
Specialist
FHWA Pennsylvania Division
19900 Governors Drive
Suite 301
Olympia Fields IL 60461
Phone: (708) 283-3540
Fax: (708) 283-3501
Email: paul.tufts@fhwa.dot.gov

Karyn Vandervoort, Environmental
Program Manager
FHWA Pennsylvania Division
228 Walnut Street, Room 508
Harrisburg, PA 17101-1720
Phone: (717) 221-2276
Fax: (717) 221-4553
Email:
Karyn.Vandervoort@fhwa.dot.gov

2. PENNDOT

The PennDOT Cultural Resources Management Program can be found on the web at www.penndotcrm.org.

Joe Baker, Cultural Resource Specialist
Bureau of Design, PennDOT
PO Box 3790
Harrisburg, PA 17105-3790
Phone: (717) 783-9147
Fax: (717) 772-0834
Email: josebaker@state.pa.us

Ira Beckerman, Cultural Resources Section Chief
Bureau of Design, PennDOT
PO Box 3790
Harrisburg, PA 17105-3790
Phone: (717) 772-0830
Fax: (717) 772-0834
Email: ibeckerman@state.pa.us

Chris Kula, Archaeologist
Bureau of Design, PennDOT
PO Box 3790
Harrisburg, PA 17105-3790
Phone: (717) 783-9700
Fax: (717) 772-0834
Email: ckula@state.pa.us

Susan MacDonald, Division Chief
Environmental Quality Assurance Division, PennDOT
PO Box 3790
Harrisburg, PA 17105-3790
Phone: (717) 787-1024
Fax: (717) 772-0834
Email: sumcdonald@state.pa.us

Kara Russell, Architectural Historian
Bureau of Design, PennDOT
PO Box 3790
Harrisburg, PA 17105-3790
Phone: (717) 705-1484
Fax: (717) 772-0834
Email: krussell@state.pa.us

3. FEDERALLY RECOGNIZED TRIBES IN CONSULTATION WITH PENNSYLVANIA FHWA AND PENNDOT (AS OF FEBRUARY 2004)

Absentee-Shawnee Tribe of Oklahoma

Govt-Govt (cc. for Section 106 and projects):

Kenneth Blanchard, Governor
Absentee-Shawnee Tribe of Oklahoma
2025 S. Gordon Cooper Drive
Shawnee, OK 74801
Phone #: (405) 275-4030
Fax #: (405) 878-4533

Section 106/environment/NEPA:

Jennifer Makaseah, Cultural
Preservation Officer
Same address
Phone #: (405) 275-4030 ext. 124
Fax #: (405) 878-4533
Email: jenniferm@astribe.com

Cc: Governor

Cayuga Nation

Govt-Govt, Section 106 and projects:

Clint Halftown, Heron Clan
Representative
Cayuga Nation
P.O. Box 11
Versailles, NY 14168
Phone#: (716) 532-4847
Fax #: (716) 532-5417
Email: clintha@adelphia.net

Environment/NEPA:

Timothy Two Guns
Same address

Delaware Nation, Oklahoma

Govt-Govt:

Bruce Gonzalez, Tribal President
Delaware Nation Oklahoma

P. O. Box 825
Anadarko, OK 73005
Phone #: (405) 247-2448
Fax #: (405) 247-9393

Section 106 and projects:

NAGPRA Director
Delaware Nation Oklahoma
P. O. Box 825
Anadarko, OK 73005
Phone #: (405) 247-2448
Fax #: (405) 247-9393
Email:

Environment/NEPA:

Darrin Ahshapanek, EPA Director
Same address

Delaware Tribe of Indians, Oklahoma

Govt to Govt:

Joe Brooks, Chief
Delaware Tribe of Indians, Oklahoma
220 NW Virginia Avenue
Bartlesville, OK 74003
Phone #: (918) 336-5272, ext. 200
Fax #: (918) 336-5513

Section 106 and projects,

Environment/NEPA:

Brice Obermeyer
NAGPRA Director
Delaware Tribe of Indians, Oklahoma
220 NW Virginia Avenue
Bartlesville, OK 74003
Phone #: (918) 336-5272, ext. 558
Fax #: (918) 336-5513
Email: bobermeyer@delawaretribe.org

Eastern Shawnee Tribe of Oklahoma

Govt-Govt, Section 106 and projects:

Charles D. Enyart, Chief
Eastern Shawnee Tribe of Oklahoma
P. O. Box 350
Seneca, MO 64865
Phone #: (918) 666-2435
Fax #: (918) 666-2186
Email: estochief@hotmail.com

Environment/NEPA:
Roxane Weldon, EPA Director
Same address

Oneida Indian Nation

Govt-Govt:
Raymond Halbritter, Nation
Representative
Oneida Indian Nation
5218 Patrick Road
Verona, NY 13478

Section 106 and projects:
Anthony Wonderley, Oneida Nation
Historian
Oneida Indian Nation
221 Union Street
P. O. Box 662
Oneida, NY 13421
Phone #: (315) 829-8455
Fax #: (315) 829-8473
Email: twonderley@oneida-nation.org

Cc: Brian Patterson
Bear Clan Representative, Men's
Council
Oneida Indian Nation
Annex Bldg.
579 Main Street
Oneida, NY 13421
Phone #: (315) 829-8327
Email: bpatterson@oneida-nation.org

Environment/NEPA and legal issues:
Stephen J. Selden, Esq.
General Council

5218 Patrick Road
Verona, NY 13478
Phone #: (315) 361-8687
Fax #: (315) 361-8621

Oneida Tribe of Indians of Wisconsin

Govt to Govt:
Cristina Danforth, Chairwoman
Oneida Tribe of Indians of Wisconsin
P. O. Box 365
Oneida, WI 54155-0365
Phone #: (920) 490-2096
Fax #: (920) 490-2099

Section 106 and projects,
Environment/NEPA:
Corina Williams, THPO
Oneida Tribe of Indians of Wisconsin
P. O. Box 365
Oneida, WI 54155-0365
Phone #: (920) 490-2096
Fax #: (920) 490-2099
E-mail: cwilliam@oneidanation.org

Cc: Oneida Business Committee
Same contact information

Onondaga Indian Nation

Govt-Govt, Section 106 and projects,
Environment/NEPA:
Irving Powless, Jr., Chief
Onondaga Indian Nation
RR #1, Box 319-B
Nedrow, NY 13120
Phone #: (315) 492-4210
Fax #: (315) 469-1725
E-mail: noncomm@igc.org

Seneca Nation of Indians

Govt to Govt:
Rickey Armstrong, President
Seneca Nation of Indians
P.O. Box 231

Salamanca, NY 14779

Section 106 and projects,

Environment/NEPA:

Kathleen Mitchell
Seneca Nation of Indians
Tribal Historic Preservation Office
467 Center St.
Salamanca, NY 14779
Phone #: (716) 945-9427
Fax #: (716) 945-1989
E-Mail: snithpo@nycountry.com

Seneca-Cayuga Tribe of Oklahoma

Govt-Govt, and cc. on Section 106 and projects:

Leroy Howard, Chief
Seneca-Cayuga Tribe of Oklahoma
P.O. Box 1283
Miami, OK 74355
Phone #: (918) 542-6609 Ext. 14
Fax #: (918) 542-3684

Section 106 and projects:

Paul Barton
Same address
Email: pbarton@nationsnetwork.net

cc. Chief Leroy Howard

Environment/NEPA:

Marion Sizemore, Environmental
Director
Same address

St. Regis Mohawk Tribe

Govt-Govt:

Chief James Ransom
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655
Phone #: (518) 358-2272
Fax #: (518) 358-2400

Section 106 and projects

Sheree Bonaparte, Historic Preservation
Officer

Same address

Phone #: (518) 358-2272

Fax #: (518) 358-4302

Email: sbonaparte@srmt-nsn.gov

Environment/NEPA:

Ken Jocks, Director
Environmental Division
RR #1, Box 8a
Hogansburg, NY 13655

Email: ken_jock@srmtenv.org

Shawnee Tribe of Oklahoma

Govt-Govt (cc. for Section 106 and projects):

Ron Sparkman, Chairman
Shawnee Tribe of Oklahoma
PO Box 189
Miami OK 74355

UPS/FEDEX should go to:
21 North Eight Tribe Trail
Miami OK 74354

Phone #: (918) 542-7774

Fax #: (918) 542-2922

Email: scout@neok.com

Section 106 and projects,

environment/NEPA:

Rebecca Hawkins, Historic Preservation
Officer

Same address

Phone #: (918) 542-2441

Fax #: (918) 542-2922

Email: shawneetribe@neok.com

cc. Tribal Chairman

**Stockbridge-Munsee Community of
Mohican Indians of Wisconsin**

Govt-Govt, Section 106 and projects:

Robert Chicks, Tribal Chairman
Stockbridge-Munsee Community of
Wisconsin
Route 1
P.O. Box 70
Bowler, WI 54416
Phone #: (715) 793-4111
Fax #: (715) 793-1307
Email: tribal.council@mohican.com

Section 106 and projects:

Cc: Sherry White, Cultural Preservation
Officer
Same address
Phone #: (715) 793-3970
Fax #: (715) 793-4836
Email: sherry.white@mohican.com and
sloudbear@yahoo.com

Environment/NEPA:

Greg Bunker
Same address
Phone #: (715) 793-4363
Fax #: (715) 793-4370

Tonawanda Seneca Nation

Govt-Govt, Section 106, and
Environmental:

Emerson Webster, Chief
Tonawanda Band of Seneca Indians
7027 Meadville Road
Basom, NY 14013
Phone #: (716) 542-4244
Fax #: (716) 542-4244
E-mail: tonsenece@buffnet.net

Tuscarora Nation

Govt-Govt, Section 106, and projects:*

Leo Henry, Chief
2006 Mt. Hope Road
Tuscarora Nation
Via: Lewiston, NY 14092
Phone/Fax #: (716) 297-7355

cc. Section 106 and projects:

Stuart Patterson, Chief
1983 Upper Mountain Road
Tuscarora Nation
Via: Sanborn, NY 14132
Phone #: (716) 298-5114

Environment/NEPA:

Tuscarora Environmental Program
Neil Patterson, Jr., Director
2045 Upper Mountain Road
Tuscarora Nation
Via: Sanborn, NY 14132
Phone #: (716) 609-3810
Email: tuscenv@igc.org

4. TRIBAL TECHNICAL ASSISTANCE PROGRAM

The Tribal Technical Assistance Program (TTAP) began in 1992 with the introduction of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The goals of the program are to assist American Indian Tribal governments by increasing their technical capabilities in transportation and to expand their workforces to effectively address their transportation needs.

Serving tribes East of the Mississippi

Michigan Technology Center
TTAP/301-E Dillman Hall Michigan
Technological University
1400 Townsend Drive
Houghton, MI 49931-1295
Phone: (888) 230-0688
Fax: (906) 487-1834

Contact: Bernard D. Alkire
Email: ttap@mtu.edu

Serving the tribes in Arizona, Colorado, New Mexico, and Utah-

TTAP at Colorado State University
Rockwell Hall, Rm. 321
Colorado State University
Ft. Collins, CO 80523-1276
Phone: (970) 491-8653

Contact: Ron Hall
Email: rhall@lamar.colostate.edu

Serving the tribes in Oklahoma, Kansas, Texas, and Nebraska- Oklahoma Tribal Technical Assistance Program

308 CITD-Oklahoma State University
Stillwater, OK 74078
Phone: (405) 744-6049
Fax: (405) 744-7268

Contact: Joseph Paden
Email: padenj@okstate.edu

Serving the tribes in Washington, Oregon, Idaho, and Western Montana -

Northwest Tribal Local Technical
Assistance Program
Eastern Washington University
Department of Urban and Regional
Planning
668 North Riverpoint Blvd., Suite A
Spokane, WA 99202-1660
Phone: (509) 358-2225 or (800) 583-
3187
Fax: (509) 358-2267

Contact Richard A. Rolland
Email: rrolland@ewu.edu

5. AGENDA FOR THE PENNSYLVANIA INTERTRIBAL SUMMIT

Wednesday, September 10th:

12:00 PM to 6:00 PM: Summit Registration

Invited participants are encouraged to pick up their registration packets, which contain essential Summit information. Participants may enter at their leisure and become acquainted with the historic Harrisburg Civic Club as well as the Summit Informational Kiosks.

Light refreshments will be served on the lower level throughout the day.

1:00 PM to 4:00 PM: Informal Orientation

Orientation will feature PENNDOT and FHWA informational kiosks on: The 106 Process and Transportation, Procedures for Public Involvement, The Minor Projects Programmatic Agreement, Project Delivery, Technology and Cultural Resource Management (CRGIS, VideoLog, Web Applications). Participating Tribes are invited to bring materials, exhibits and information on their programs for display and distribution.

2:00 PM to 4:00 PM: The FHWA and Tribal Consultation in NEPA and Section 106 (Deborah Suci-Smith and Karyn Vandervoort, FHWA Pennsylvania Division)

4:00 PM to 4:30 PM Break

4:30 PM to 5:30 PM: Opening Reception

Light refreshments, upper and lower levels.

*Welcoming remarks by James Cheatham, Administrator, Pennsylvania Division FHWA, and Al Beihler, Secretary of Transportation
upper level.*

Dinner on your own – descriptions provided for Second and Third Street restaurants.

Thursday, September 11th, 2003

8:30 AM to 9:00 AM: Summit Opening

Opening remarks and benediction from a tribal representative, Opening remarks by MaryAnn Naber, FHWA Preservation Officer, and Introduction to the summit by Ron Hall, Tribal Transportation Assistance Program.

9:00 AM to 12:00 PM: Concurrent Community Caucuses

Tribal Community Caucus (Ron Hall, Facilitator): Tribal members will adjourn to the lower level to participate in a round-table, open discussion in regards to enhancing consultation activities and identifying potential challenges with the FHWA Pennsylvania Division 106 process.

Transportation Community Caucus (Valerie Hauser, ACHP, Facilitator): Transportation and Preservation members will adjourn to the upper level to join the ACHP in identifying issues surrounding improved tribal consultation.

10:15 AM to 10:30 AM: Mid-morning Break

Light refreshments and beverages, lower level.

12:00 PM to 1:30 PM: Lunch Break and Prayer

Participants have the choice of eating lunch at one of the local eateries. Lunch break will conclude promptly at 1:30 pm.

1:30 PM to 2:30 PM: Caucus Results Exchange: Ron Hall and Valerie Hauser; upper level

2:30 PM-2:45 PM: Mid-afternoon Break

Light refreshments and beverages, lower level.

2:45 PM to 4:30 PM: Topical Discussion

Tribal and Transportation representatives will focus on areas of potential agreement identified in the caucuses; upper level

4:30 PM to 5:00 PM: GIS Demonstration Pete Van Rossum, Pennsylvania Historical and Museum Commission; Upper level

5:00 PM: Closing Prayer

Pot-luck dinner provided by volunteers at the Keystone Building (plaza and cafeteria)

7:00 PM to 8:00 PM: Optional Tour of Native American Land Deeds

Please report to the Pennsylvania state museum at Third and North streets, where you will be guided to the Pennsylvania State Archives by Linda Ries, PHMC.

Friday, September 12th, 2003

8:30 AM to 10:00 AM: Breakout Groups

Tribal and Transportation representatives will discuss relevant issues. Issues areas listed below are subject to change; final topics will be announced on Thursday, September 11. Upper level.

Group A: Programmatic Agreement for Minor Transportation Projects

Group B: Programmatic Agreement with Sovereign Nations

Group C: Traditional Homelands

10:00AM to 10:15 AM: Break

Light refreshments and beverages, lower level.

10:15 AM to 11:00 AM: Breakout Groups Results Exchange

Breakout Group representatives will share the results gathered from each group.

11:00 AM to 12:00 PM: Closing Discussion and Remarks

Closing comments by Tribal and Transportation representatives and closing benediction from a tribal representative.

12:00 PM to 1:30 PM: Lunch

Lunch break will conclude promptly at 1:30 PM.

Please be at the Civic Club by 1:30 if you intend to tour the Carlisle Indian School. Two buses will be waiting on North Street near the YMCA

1:30 PM to 4:00 PM: Optional Tour of the Carlisle Indian Industrial School (Photo ID Required!)

4:30 PM to 5:00 PM: Closing Remarks

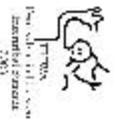
Light refreshments and beverages, lower level porch

5:00 PM: Closing Prayer

Given by a tribal representative

6. SUMMIT BUDGET

				2003 TRIBAL SUMMIT BUDGET			
ITEM	EST. COST	ACT. COST	DATE	AMOUNT	RECEIVED	PAID	COMMENTS
VENUE	\$2,650.00	\$10,688.94					
MEALS	\$3,000.00						
TOTAL	\$5,650.00	\$10,688.94		\$0.00			
FACILITATION	\$4,000.00	\$4,000.00					
TOURS	\$250.00	\$250.00					
OTHERS	\$1,688.20	\$1,688.20					
TOTAL INVITATIONAL SPEAKERS	\$5,938.20	\$5,938.20		\$0.00			
INTRA-CONFERENCE TRANSPORTATION	\$1,370.00	\$1,370.00					
TRAVEL	\$7,800.00	\$19,928.22					
INCIDENTAL EXPENSES	\$2,688.00	\$2,688.00					
ACCOMMODATIONS	\$3,381.00	\$3,381.00					
TOTAL M&E	\$15,239.00	\$27,367.22		\$0.00			
GIFT BASKETS	\$0.00						
PROGRAMS	\$0.00						
MEETING MATERIALS	\$0.00						
POST-CONFERENCE REPORT	\$10,000.00	\$10,000.00					
TOTAL MATERIALS	\$10,000.00	\$10,000.00		\$0.00			
GRAND TOTAL	\$36,827.20	\$53,994.36		\$0.00			
BUDGET BALANCE ALLOCATION	\$58,172.80	\$41,005.64					
	\$95,000.00						



APPENDIX B: USEFUL FORMS

1. SUMMIT REGISTRATION AND TRAVEL FORMS



**FHWA Pennsylvania Division
Intertribal Summit**

**Harrisburg, Pennsylvania
September 10-12, 2003**

Instructions for Reimbursable Expenses

You have been invited to attend an official government function sponsored by the Pennsylvania Division Office of the Federal Highway Administration (FHWA). The FHWA has agreed to reimburse you for certain travel and transportation expenses according to the approved Federal Travel Regulations and Federal Highway Guidelines. To assist you in the preparation of your claim, the following basic reimbursement rules are provided.

Reservations, bookings, and claims completed outside the parameters of this guidance is subject to denial of reimbursement. Please fill out the attached Reimbursable Cost Information Form and fax it to the FHWA at (717) 221-3494 to the attention of Nancy Morgan.

Transportation

Common Carrier Transportation (air, rail, or bus):

The Pennsylvania Division Office (DO) is sponsoring your Invitational Travel. The DO will obtain the necessary tickets from the travel agency based on the information provided on the Reimbursement Cost Information Form. The tickets will be mailed to the traveler(s) prior to the departure date.

**DO NOT PURCHASE COMMON
CARRIER TRANSPORTATION
TICKETS USING CASH OR ANY
PERSONAL CREDIT CARD**

Taxi: Taxi service can be authorized for transportation to and from the residence or place of business and the airport. Upon arriving in Harrisburg, transit to the hotel and venue will be provided at no cost. **The cost of the taxi and tip is reimbursable under \$75.00.** A receipt is not necessary if the total cost is under \$75.

**A RECEIPT IS
REQUIRED FOR
THE TAXI AND TIPS
IF OVER \$75.00.**

Privately Owned Vehicles (POV): Mileage for POVs maybe authorized in lieu of taxi services for transportation to and from your residence of Official Duty Station and the airport or other common carrier. **Reimbursement for mileage is 36.0 cents per mile. You are asked to record your odometer reading in order to claim the mileage.**

Parking is available at the Crowne Plaza for \$8/day. This is a reimbursable cost. Costs totaling less than \$75 do not require a receipt.

Rental Car: Use of a rental car must be authorized in advance. Cost of additional insurance is not a reimbursable cost. Travelers are required to waive the additional insurance policies.

Meals and Lodging Expenses

FHWA will reimburse invitational travelers for lodging, meals and incidental expenses based on the Per Diem Allowance. Lodging accommodations are available at the **Crowne Plaza, Harrisburg**. A block of rooms has been reserved for your stay while on official duty at the Tribal Summit. The block of rooms is under "FHWA Tribal Summit". Reimbursable lodging accommodations will be limited to \$79/day. You are responsible for making your own hotel reservations. **Please contact the Crowne Plaza at 1-800-2-Crowne by August 20 to make your accommodation reservation.**

The FHWA is providing meals for the duration of the Tribal Summit, to include:

September 10 – dinner

September 11 – breakfast and lunch

September 12 – breakfast, lunch and dinner

Reimbursement for meals will be limited to only those meals that occur outside the duration of the Summit, but can include meals during travel. Per diem allowance for meals during travel days is **limited to \$34.50**

Receipts

Receipts are required for 1) lodging, 2) airfare or train, and 3) expenses of \$75.00 or more. Please provide original receipts. You may want to submit receipts for everything to support your claim. Attach all receipts to an 8.5"X11" sheet of paper to ensure that the receipts are not lost in transit.

If you have any questions, please contact Ms. Nancy Morgan of the FHWA at (717) 221-3461.

**FHWA Intertribal Summit
Harrisburg, Pennsylvania
September 10-12, 2003**



Reimbursable Cost Information Form^{1,2}

*PLEASE TYPE OR PRINT AND FAX TO Nancy Morgan at 717-221-3494 or mail to
Federal Highway Administration
Attention: Nancy Morgan
228 Walnut Street, Room 536
Harrisburg, PA 17101*

NAME (last, first, middle initial):	
Email:	
Social Security Number:	Telephone Number:
	Fax Number:
Mailing Address (include zip code) ***Reimbursement will be mailed to this address	
Present Duty State (City, State)	
Transportation Information Originating Airport/Transfer Station Name *** FHWA will purchase the ticket for you based on the information below. DO NOT purchase your own ticket Desired date of arrival: _____ Time: _____ am/pm (circle) Desired date of return: _____ Time: _____ am/pm (circle)	
Hotel Information A block of rooms is available at the Crowne Plaza (1800-2-Crowne), under "FHWA Tribal Summit" Have you made the hotel reservation? YES _____ NO _____ If YES, what is the rate? _____ *** FHWA reimbursable rate is \$79/night Hotel Name: _____ Phone number _____	

If you have **any** questions, please contact Nancy Morgan at (717) 221-3461

¹ Some responses may duplicate information on the Registration Form, but to ensure proper handling, **please complete both forms.**

² Please complete a form for each representative requiring travel and/or accommodations.

2. PENNDOT INTERIM GUIDANCE ON TRIBAL CONSULTATION

Date:

Subject: Interim guidance on consulting with Indian Tribes

To: District Engineers and District Administrator

From: Dean Schreiber, PE
Director
Bureau of Design

This Strike Off Letter provides guidance as to Consultation with Native American Tribes. The 1992 amendments to the National Historic Preservation Act, and changes made in 1999 to the implementing regulations (36 CFR Part 800) of Section 106 of that Act (and made effective January 11, 2001), obligate federal agencies to work more closely with Native American Tribes in reaching decisions. As a federal agency, the Federal Highway Administration (FHWA), and by extension this Department, need to make a reasonable and good faith effort to identify and consult with Indian Tribes that may attach religious and cultural significance to historic properties affected by Federal-aid projects. These historic properties may be located on tribal lands. Pennsylvania has no current tribal lands, but historic properties may also be located on ancestral, aboriginal or ceded lands affected by Department projects. The purpose of this interim guidance is to advise Engineering Districts and project managers how best to approach tribal consultation. As has been demonstrated in other states, developing a good working relationship with Tribes takes time. This guidance will undergo a refinement over the next few years; however, a general approach has been worked out, and steps that point the Department in the right direction are warranted.

At this time, a total of 14 Federally recognized Tribes have been identified that are likely to have an interest in Pennsylvania projects. Federal recognition is a key component of 36 CFR Part 800. A list of federally recognized Tribes is maintained at the Bureau of Indian Affairs web site: www.doi.gov/bureau-indian-affairs³. However, this information can also be found at other sites, including <http://www.artnatam.com/tribes.html> and on the PENNDOT Shared Drive, under ***PENNDOT Shared/BEQ/Cultural Resources/Tribal Consultation/FHWA CD/***. Federally recognized Tribes have special status as a consulting party⁴ under the regulations even for historic properties off tribal lands. In addition, each Tribe is a sovereign nation. Therefore, FHWA as part of the Federal Government, engages in government-to-government relations with Tribes. These responsibilities are established by treaty and cannot be delegated. Tribes that are not Federally recognized may also participate in the Section 106 process; however, their status is

³ As of this date, the Department of the Interior Web Site is unavailable, due to a federal lawsuit with the Bureau of Indian Affairs.

⁴ Consulting party, as formally defined under 36 CFR Part 800.2 (C)(2)(ii). “*Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.”

Tribal Consultation Guidance

equivalent to other interested parties. (Please note that each reference to “tribe” below is to a federally recognized Indian tribe, as defined in 36 CFR Part 800, unless otherwise noted.)

In the long-term, FHWA and the Department hope to reach specific protocols, or understandings, with each of the Tribes that would outline the procedures used to fulfill our obligation to consult. Reaching that specificity will involve ongoing discussions with each of the Tribes, and may include a summit in 2003. It is important to note that the foundation for these protocols needs to be trust and good communication, which cannot be forced or rushed.

SPECIFIC GUIDANCE

In the short-term, the Department has been delegated activities on behalf of FHWA and with the consent of the Tribes, to begin consultation with Tribes and to transmit documentation and otherwise coordinate with the Tribes. Two forms are attached to facilitate that coordination: a PENNDOT Project Initial Tribal Notification Form, and a PENNDOT Project Information Form.

A matrix identifying relevant Tribes, notification procedures, tribal concerns, and tribal contact is provided for each Engineering District, along with a map identifying approximate boundaries for each tribe’s geographic interest. A set of 200 mailing labels and an electronic copy of the tribal contact list is also being provided to each Engineering District. The tribal contact list also includes the names of tribal officials to be copied during the consultation process. The Department, in consultation with FHWA, will update the list on an ongoing basis. It should be noted that tribal contacts change frequently

GOALS

The purpose of consultation with Tribes is no different from consultation with the SHPO or consultation with other interested parties. That purpose is to reach an informed and supported decision on how to treat the effects of projects on historic properties. Where historic properties are of religious and cultural significance to Tribes, we expect that the Tribes bring a unique and added perspective to the consultation process. When Tribes are provided with a reasonable opportunity to provide advice on the identification and evaluation of such properties, when Tribes articulate views on the project’s effects on such properties, and when Tribes participate in the resolution of adverse effects to such properties, the decisions and results will be better.

INITIAL CONSULTATION

Consultation between the Department and each Tribe is to be done in a manner that is sensitive and respectful of tribal sovereignty. In principle, consultation should begin *early* in a project’s planning process so that all parties have ample time to identify and discuss relevant

historic preservation issues and resolve concerns about the confidentiality of information *concerning historic properties of religious and cultural significance to tribes* (our emphasis).

The attached matrix identifies which circumstances trigger a Tribe's interest and at what point a Tribe would want to be notified of a project. In almost all cases, Tribal interest is limited to archaeological resources of either the Pre-Contact or Contact periods. Consequently, only projects involving ground-disturbing activities in previously undisturbed areas are likely to be of interest. In general, notification to the Tribes for Categorical Exclusion (CE)-level projects⁵ should occur shortly after the project scoping, so that archaeological potential can be summarized.

For larger Environmental Impact Statement (EIS)-level projects⁶, initial notification to the Tribes should occur during Step 2 of PENNDOT's ten-step process (Publication 278), after the publication of the Notice of Intent, but before the project's introduction at ACM. Materials to be transmitted should include a copy of the Notice of Intent, as well as summary materials that have been prepared for ACM. In the initial notification, a statement should be added that informs the Tribes that subsequent notification will occur during Step 4 or Step 5, certainly by the time that an archaeological predictive model would have been developed and expected to be used to either dismiss alternatives (Step 4) or as part of the detailed engineering and environmental analyses (Step 5). The predictive model should be presented to the Tribes at the same time it is presented to other agencies, such as the SHPO.

For Environmental Assessment (EA)-level projects⁷, initial notification would take place during Step 2 at the conclusion of the scoping field view. Subsequent notification would occur during Step 3 identification efforts, or during the development of any archaeological predictive modeling.

Some of the Tribes, such as the Oneida Indian Nation or the Seneca Nation of Indians, have geographically proscribed areas of interest. In the future, these are expected to be provided in maps of Pennsylvania, demarcated for these Tribes. Other Tribes, such as the Eastern Shawnee Tribe of Oklahoma, lived in all parts of Pennsylvania, and no map would be useful. However, the Eastern Shawnee Tribe of Oklahoma and the Absentee-Shawnee Tribe of Oklahoma occupied Pennsylvania during a defined period of time. In cases where more than one Tribe could have occupied a project area, notification should be to all of these Tribes. As the project advances and as archaeological sites are identified and associated with specific cultures, we expect that some of the Tribes would end consultation or that one of the Tribes would be designated as lead tribe by those Tribes already notified.

It is the responsibility of the District qualified professional archaeologist to transmit documentation to the Tribes, and to ensure that copies are provided to both FHWA, attention the

⁵ Categorical Exclusions are projects that which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts, per 23 CFR Part 771.117(a).

⁶ Actions that significantly affect the environment, per 23 CFR Part 771.115(a)

⁷ Actions in which the significance of the environmental impact is not clearly established, per 23 CFR Part 771.1159(c).

Tribal Consultation Guidance

environmental review team member, and the Bureau of Design Environmental Quality Assurance Division, attention Susan McDonald. Follow the matrix to identify the point at which a tribe should be notified. Not all Tribes will be requesting notification at the same stage in a project, so it is important to check each tribe's notification interest at the start of a project. Use the PENNDOT Project Initial Tribal Notification Form to begin consultation, attaching a Scoping Field View Project Description Form. The Department contact should be the Department qualified professional archaeologist that covers the District in which the project is located. Tribal contact information should be pre-printed on the Form for each tribe contacted. The back of the form can be *self-addressed* to the attention of the Department qualified professional archaeologist and *stamped* to ensure a timely response, or, a self-addressed, stamped envelope can be enclosed.

INITIAL CONSULTATION FOR PRE-EXISTING PROJECTS

Projects that have begun prior to the issuing of this interim guidance can and should still benefit from tribal consultation, and the fact that a project has begun does not alleviate FHWA's and the Department's responsibilities to consult. Changes to the National Historic Preservation Act were made in 1992, and both regulations and other Federal Directives have been in place for two or more years.

When tribal notification comes after studies have begun, both the PENNDOT Project Initial Tribal Notification Form and the PENNDOT Project Information Form should be used. The Initial Notification Form should contain the project description, while the Information Form should contain any documentation or information to be provided at this stage of study. Copies of the PENNDOT Project Initial Tribal Notification Form and attachments should be provided to both FHWA and the Bureau of Design Environmental Quality Assurance Division, attention Susan McDonald.

Bringing tribal consultation into an ongoing Section 106 process should be dictated by a common-sense approach that emphasizes the potential value of that consultation, not only for the purposes of Section 106, but also for the National Environmental Policy Act (NEPA), and to some extent Environmental Justice. Table 1 lists the evolving steps in Section 106 and the appropriate response by the Department to initiate consultation.

CONTINUING CONSULTATION

Once a Tribe has received notification of a project, the Department will continue to transmit relevant information to the Tribe, until the Tribe directs otherwise. Tribes may choose to be a consulting party on a project at any time, but even when not choosing to be a consulting party, may still request project information. Informal consultation, including telephone conversations, on-site meetings, web sites, and e-mail is to be encouraged, and documented in the project file. At critical decision points and where decisions are documented, each consulting Tribe should receive a copy of that documentation, like the SHPO and FHWA. Each document

Tribal Consultation Guidance

transmittal must have the PENNDOT Project Information Form (attached) as it's cover, and should contain a one-page synopsis of the material being transmitted.

CD-ROM HANDBOOK REFERENCE

FHWA has prepared a CD-ROM collecting information on tribal consultation from both a national perspective and some state examples. Existing legislation and Executive Orders are available in folders, along with some specific guidance, reference materials, and maps. The CD-ROM files are currently available in the PennDOT Shared Drive, under the BEQ/Cultural Resources/Tribal Consultation folder.

FUTURE STEPS

FHWA has sent letters to each of the 14 Tribes to confirm its delegation of routine matters to the Department and to confirm the conditions and timing of projects of interest. In the near future, the Department will be providing a series of documents to all 14 Tribes, including:

- PENNDOT's 12-year Plan
- Copies of the Minor Projects Programmatic Agreement and Operating Procedures
- Copies of the Minor Projects Programmatic Agreement Annual Reports for years 1997 through current
- A list of current and ongoing Phase III archaeological projects

Because this guidance is interim, the Department, in consultation with FHWA and the Tribes, will be revising and updating these procedures. In particular, the Department expects a further refinement of the geographic boundaries of each tribe's interests, as well as a refinement of the types of projects and conditions that would trigger consultation. Input from the Engineering Districts will be crucial to ensure this guidance meets both the letter and spirit of the law and implementing regulations. Please direct your comments to Susan L. McDonald, Chief of the Environmental Quality Assurance Division, at 717-787-1024.

4300/ICB/jh
772-0830

Tribal Consultation Guidance

Cc: G. L. Hoffman, P.E., KB 7
All Highway Administration Bureau Directors
All District Environmental Managers
D. Spila, KB 8, PO
D. A. Schreiber, P.E., KB 7, BOD
S. L. McDonald, KB 7, BOD
B. D. Hare, P.E., KB 7, BOD
C. J. Campbell, KB 7, BOD
M. D. Lombard, KB 7, BOD
I. C. Beckerman, R.P.A., KB 7, BOD
K. Vandervoort, FHWA
J. H. Cutler, PHMC
Bureau of Office Services, Sales Store and
Paperwork Management Unit, KB 5
Consulting Engineers Council of PA
2040 Linglestown Rd., Suite 200
Harrisburg, PA 17110
Attn: John VanNatta

Table 1

Project has reached this Section 106 Stage:	Guidance
Scoping Field View	Provide a project description and project map and assessment of archaeological potential – continue to involve Tribes
APE Established	Provide a project description, project map showing APE for archaeology, and assessment of archaeological potential – continue to involve Tribes
Execution of project-specific Programmatic Agreement	Provide above documentation, a copy of the PA, and a written statement from FHWA that Tribes will be consulted on this project – continue to involve Tribes
Identification of historic properties (archaeological sites)	Provide above documentation and Phase I and/ or II archaeological report (most likely draft) – continue to involve Tribes
Determination of eligibility of historic properties (archaeological sites)	Provide above documentation and Phase I and II archaeological report, and SHPO’s comments – continue to involve Tribes
Determination of Effect	Provide above documentation and Phase I and II archaeological report, and SHPO and other consulting party comments – continue to involve Tribes
Minor Projects Programmatic Agreement Findings D.2 and D.3	Provide copies of the D.2 or D.3 Finding and Phase I and II archaeological report, and SHPO and other consulting party comments – continue to involve Tribes
Resolution of Adverse Effect	Provide project documentation relevant to adversely affected archaeological sites, including Phase I and II reports and proposed mitigation plans. Unless an MOA has been executed, involve Tribes in consultation to resolve Adverse Effects, which includes sharing draft MOA’s, and determining whether any Tribe(s) should be signatory or concurring party(ies)
Executed Memorandum Of Agreement to resolve Adverse Effect	Provide project documentation relevant to adversely affected archaeological sites, including Phase I and II reports, and proposed mitigation plans, and a copy of the MOA. – continue to involve Tribes in the mitigation efforts, including progress reports and site visits.
Data Recovery Excavations or other mitigation completed	Provide NEPA document, relevant Phase I and II reports, including interim mitigation reports. – continue to involve Tribes in review of reports.
Draft Report Completed	Provide NEPA document, relevant Phase I and II reports, including interim mitigation reports. – seek Tribal comment in review of reports.
Final Report Completed	Provide NEPA document, relevant Phase I and II reports, and copy of Final Report for any final report completed in 2002.

PENNDOT Project Initial Tribal Notification Form

(for PENNDOT use only)

Date: _____ **ER#:** _____ **SR#:** _____ **Section#:** _____ **MPMS#** _____

County: _____ **Contact Name:** _____

Telephone: () _____ **Fax:** () _____ **Email:** _____

Brief Project Description (.e.g. adding lanes, bridge replacement):

(see attached Scoping Field View Project Description form)

Project Type

- | | |
|---|---|
| <input type="checkbox"/> Minor Transportation (Categorical Exclusion) | <input type="checkbox"/> Environmental Impact Statement (EIS) |
| <input type="checkbox"/> Other Categorical Exclusion | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Environmental Assessment (EA) | |

Archaeological Potential (pre-Contact or Contact Period sites)

- | | |
|--|--|
| <input type="checkbox"/> Known pre-Contact Period sites in project area | <input type="checkbox"/> Unlikely to find pre-Contact Period sites in project area |
| <input type="checkbox"/> Known Contact Period sites in project area | <input type="checkbox"/> Unlikely to find Contact Period sites in project area |
| <input type="checkbox"/> Likely to find pre-Contact Period sites in project area | <input type="checkbox"/> No expected ground disturbance |
| <input type="checkbox"/> Likely to find Contact Period sites in project area | <input type="checkbox"/> Other _____ |

Comments

Tribal Response

(for tribal use only)

Tribal contact for this project:

Tribe:
Name:
Address: _____ *(pre-printed)*
City, State, Zip:
Telephone: () _____
Fax: () _____
Email:
Copies to:

Note : If any of the information to the left is incorrect, please provide those changes to the Department contact above, or, to:
Ira Beckerman
Cultural Resources Section Chief
PENNDOT Bureau of Design
P.O. Box 3790
Harrisburg, PA 7105-3790
ibeckerman@state.pa.us

Do you wish to be a consulting party on this project? Yes No Not Sure

If you do not wish to be a consulting party, do you wish to Yes No Not Sure

continue to be involved in the development of the project?

Note: If your answer is "Not Sure," PENNDOT will continue to provide information.

Do you wish to inform PENNDOT of any traditional religious and culturally important places in or near the project area? [information to be kept confidential] Yes No

If yes, please inform PENNDOT how to proceed to address the tribe's concerns:

Name of person completing this form, if different from above (please print):

Date: _____

Signature: _____

PENNDOT Project Information Form

(for PENNDOT use only)

Date: _____ **ER#:** _____ **SR#:** _____ **Section#:** _____ **MPMS#** _____

County: _____ **Contact Name:** _____

Telephone: () _____ **Fax:** () _____ **Email:** _____

Brief Project Description (.e.g. adding lanes, bridge replacement):

(if this is the Initial Notification, provide the Initial Notification Form along with Scoping Field View Project Description form)

Project Status

- | | |
|---|--|
| <input type="checkbox"/> Initial Notification | <input type="checkbox"/> Determination of Effects |
| <input type="checkbox"/> Early Coordination | <input type="checkbox"/> Resolution of Adverse Effects (Phase III) |
| Date of Initial Notification: _____ | <input type="checkbox"/> Execution of Memorandum of Agreement |
| <input type="checkbox"/> Archaeological and Historic Resources identified | <input type="checkbox"/> Conducting Mitigation |
| <input type="checkbox"/> Determination of Eligibility (Phase II) | <input type="checkbox"/> Other: _____ |

Enclosure(s)

Documents/Information enclosed:

Comments

Tribal Response

(for tribal use only)

Tribal contact for this project:

Tribe: _____
Name: _____
Address: _____ *(pre-printed)*
City, State, Zip: _____
Telephone: () _____
Fax: () _____
Email: _____
Copies to: _____

Note: If any of the information to the left is incorrect, please provide those changes to the Department contact above, or, to:
Ira Beckerman
Cultural Resources Section Chief
PENNDOT Bureau of Design
P.O. Box 3790
Harrisburg, PA 7105-3790
ibeckerman@state.pa.us

Do you wish to be a consulting party on this project? Yes No Not Sure

If you do not wish to be a consulting party, do you wish to continue to be involved in the development of this project? Yes No Not Sure

Note: If your answer is "Not Sure," PENNDOT will continue to provide information.

Document Comments

Do you agree with the findings of eligibility or effect? (check one)] Yes] No
If no, please comment: _____

Do you wish to inform PENNDOT of any traditional religious and culturally important places in or near the project area? [to be kept confidential]] Yes] No

Do you have any other concerns?] Yes] No
If yes, please inform PENNDOT how to proceed to address your concerns: (add pages if necessary) _____

Name of person completing this form, if different from above (please print): _____

Signature: _____ Date: _____

Tribe	Absentee- Shawnee Tribe of Oklahoma	Cayuga Nation	Delaware Nation, Oklahoma
Geographic Area	Statewide	Vicinity of Susquehanna River, West Branch	Eastern Pennsylvania
Notification Conditions	Ground-disturbing activities in previously undisturbed areas.	Ground-disturbing activities in previously undisturbed areas.	Ground-disturbing activities in previously undisturbed areas.
Notification Timing	Early upon initial scoping of projects	Early in the planning process	Early upon initial scoping of projects
Tribal Concerns	Not Available	*Would like to meet with FHWA to work on consultation procedures *Access to archaeological info. Regarding site locations etc.	Do not send information on projects that aren't ground disturbing
Current Project Interest	Not Available	Not Available	*Mon/Fayette Project (consulting party) *51 to Pittsburgh – requested field survey (surface and subsurface) for preferred alternative *Route 15 – request for a archaeological field survey *SR 0412 – would like more details, would like to see a Phase 1 or 2
Tribal Contact for Section 106			

Tribe	Delaware Tribe of Indians, Oklahoma	Eastern Shawnee Tribe of Oklahoma	Oneida Indian Nation
Geographic Area	Eastern Pennsylvania	Statewide	Main Br. of Susquehanna River-Middle Reaches to NY Border: Bradford, Wyoming, Luzerne, Columbia, Northumberland, Montour, Snyder Counties
Notification Conditions	Ground-disturbing activities in previously undisturbed areas.	Ground-disturbing activities in previously undisturbed areas.	Want to receive reports and information concerning archaeological resources
Notification Timing	Early upon initial scoping of projects	Early upon initial scoping of projects	Not Available
Tribal Concerns	Not Available	Would like to deal with both DOT and FHWA	*Too much info. Sent *Can only be involved as an interested party
Current Project Interest	*Route 15 – working with Delaware Nation	Not Available	Not Available
Tribal Contact for Section 106			

Tribe	Oneida Tribe of Indians of Wisconsin	Onondaga Indian Nation	Seneca Nation of Indians
Geographic Area	Statewide	Eastern and Northeastern Pennsylvania	Northwestern Pennsylvania
Notification Conditions	Ground-disturbing activities on major and minor projects.	*All ground disturbing activities in pristine areas (previously undisturbed)	*All ground disturbing activities in pristine areas (previously undisturbed) *Especially sites near rivers
Notification Timing	When final alternative has been selected (for large projects); when APE has been established for small projects.	Not Available	Early upon initial scoping of projects
Tribal Concerns	Would like to continue to be part of the consultation process	Would like to meet to further define the notification guidelines	Exchange of site file info. For specific projects in PA, want to make sure they have copies
Current Project Interest	Not Available	CSVT Project – interested in archaeological materials	Not Available
Tribal Contact for Section 106			

Tribe	Seneca-Cayuga Tribe of Oklahoma	St. Regis Mohawk Tribe	Shawnee Tribe of Oklahoma	Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Geographic Area	Not available	Not available	Not available	Not available
Notification Conditions	*All ground disturbing activities in pristine areas (previously undisturbed)	*All ground disturbing activities in pristine areas (previously undisturbed)	Not available	*All ground disturbing activities in pristine areas (previously undisturbed)
Notification Timing	Not Available	Not Available	Not available	Early upon initial scoping of projects
Tribal Concerns	Not Available	Not to disturb any human remains or properties that are sacred	Not available	*Do not send reports unless there are issues they are concerned with *Send a summary first to see if they are interested
Current Project Interest	Not Available	Not Available	Not available	Not Available
Tribal Contact for Section 106				

Tribe	Tonawanda Seneca Nation	Tuscarora Nation
Geographic Area	Not available	Central and Western Pennsylvania
Notification Conditions	*All ground disturbing activities in pristine areas (previously undisturbed)	Simple description at beginning of projects
Notification Timing	Not Available	Not Available
Tribal Concerns	Not Available	Not Available
Current Project Interest	Not Available	Not Available
Tribal Contact for Section 106		

* Unless otherwise instructed by the Tribe or FHWA, correspondence will be submitted to Tribes under FHWA cover.

Project Managers are responsible for transmittal of NEPA Documents to FHWA for transmittal to the Tribes.

APPENDIX C: USEFUL PROTOCOLS

A summit meeting is, without a doubt, a diplomatic undertaking between sovereign nations. Respectful diplomacy demands protocol. These are just some of the protocols we learned about in the course of the Pennsylvania Summit. The best source of advice on acceptable protocols is obviously the attending tribes, and like any society or culture, different tribes may have very different customs and protocols. Don't be afraid to broach the subject of proper protocols and etiquette with a tribal representative. They're usually more than happy to tell you what you need to know to avoid awkward or embarrassing moments. Please note that, while some of these protocols are unique to specific Native American tribes, some of these are simply points of respectful behavior.

Among most of the tribes we consult with:

- The eldest member, or eldest chief or leader, should be invited to offer a benediction at the beginning and end of the summit.
- Chiefs should be addressed as the ranking official of the Nation, much like the President of the United States.
- A formal introduction of a Chief to the Division Administrator, Transportation Secretary, and/or the Governor is important.
- When hosting a buffet meal (like our potluck), the eldest tribal members should be invited to eat first.
- Photography may require permission of the subject, and is inappropriate during prayers.
- The hosts should provide commemorative gifts to their visitors that are symbolic of the collaborative relationship between nations.
- Speakers stand. The speaker holds the floor until he/she sits down. There may be silence after someone has spoken, and it should not be regarded as an opportunity to "blurt something out". Such silence is simply a sign of respect among some tribes, a moment's pause to allow a speaker's words to "sink in" and to be sure he or she is done speaking.
- Don't interrupt conversations. Be respectful of speakers.

-
- The kind of forceful, blunt and direct commentary that is common in agency meetings can be viewed as pushy and overbearing in a diplomatic setting like a summit. Use respectful and polite language when expressing opinions, asking questions, or requesting something.

APPENDIX D: MINUTES AND ATTENDEES OF THE PENNSYLVANIA INTERTRIBAL SUMMIT

**Minutes of the Pennsylvania Intertribal Summit
September 10-12, 2003
Harrisburg, Pennsylvania**

An Intertribal Summit involving representatives of various Federal and State governmental agencies and representatives of federally recognized Indian tribes that may attach religious and cultural significance to historic properties in Pennsylvania was held on September 10th, 11th, and 12th, 2003, in Harrisburg, Pennsylvania. Representatives of the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), the Pennsylvania Department of Transportation (PENNDOT), the Pennsylvania Turnpike Commission (PTC), the Advisory Council on Historic Preservation (ACHP), and the Pennsylvania Historical and Museum Commission (PHMC) were in attendance. A list of all Intertribal Summit attendees is attached. The minutes for the Summit follow.

September 10, 2003

Welcome and Introductory Remarks

Karyn Vandervoort, FHWA's Pennsylvania Division Environmental Manager, opened the Intertribal Summit with introductory remarks welcoming all the participants. She then introduced Paul Tufts, Environmental Specialist of the FHWA's Resource Center in Olympia Fields, Illinois. The first session of the Summit consisted of an educational presentation, which included background information.

1.0 Who are Native Americans?

Paul Tufts did a presentation on the constitutional responsibilities of the Federal government and its relationship with federally recognized Indian tribes. The main points of his presentation are summarized below.

Native Americans are the indigenous people of North America. They are: 1) American Indians; 2) Indian tribes; 3) Native Hawaiians; and 4) Alaska Natives. There are some misconceptions that have surfaced in working with federally recognized Indian tribal governments. One misconception is that federally recognized Indian tribes are equivalent to racial minorities. Members of federally recognized Indian tribes are citizens of sovereign nations. Another misconception is that federally recognized tribal governments are equal to a local government unit. The sovereign status of tribal governments must be recognized in the consultation process. Tribal governments are above or equal to state governments. Tribal leaders are elected officials. Senior tribal officials should be treated with the type of respect extended to other senior government officials. There is a distinction between government to government consultation and communication between FHWA and tribal staff.

1.1 Relationship Between the Federal Government and Federally Recognized Tribes

The relationship of the Federal government to federally recognized tribes is guided by the fact that tribes are sovereign governments or nations. They are a "Nation within a Nation." The sovereign status of the tribes is set forth in the Constitution. It is supported by treaty rights and case law. The sovereign status of federally recognized Indian tribes gives each tribe the right to establish its own form of government. Tribes have the power to determine who has membership in the tribe. Tribes have the power to administer justice—the power to make and enforce laws.

The relationship between the Federal government and federally recognized Indian tribes is guided and defined by: 1) treaties; 2) sovereignty; and 3) Federal trust responsibility.

Treaties are legal agreements between sovereigns. Treaties are not diminished by the passage of time. Treaties form the foundation of Federal Indian law. Treaties are recognized as the supreme law of the land and they preempt State laws. The tribes ceded land and other rights *via* treaties. There are approximately 380 treaties which have been ratified by the tribes that are in effect today.

Common provisions of treaties include: 1) a guarantee of peace; 2) the delineation of geographic boundaries; 3) the guarantee of hunting and fishing rights; 4) the recognition of U.S. authority; and 5) the regulation of trade and travel in Indian territory.

There are several canons of construction for treaties. By law, treaties must conform to the following constraints: Treaties must be construed as tribal representatives would have understood them. Treaties must be liberally interpreted to accomplish their protective purposes. Issues must be resolved in favor of the Indians, if treaties are ambiguous or if there is a question of intent.

The sovereignty of federally recognized American Indian tribes defines the relationship of the tribes to the U.S. government. The sovereignty of the tribes gives them the authority of self-governance. Sovereignty also distinguishes tribal members from other ethnic minorities.

The Marshall Trilogy is a series of three landmark Supreme Court decisions that were taken in 1823. These decisions were as follows: 1) Indian nations can only convey land to the U.S.; 2) Indian tribes are domestic dependent nations; and 3) the U.S. government has a trust responsibility.

The U.S. government has a federal trust responsibility in its interactions with federally recognized American Indian tribes. The Federal government must consult with and consider the interests of federally recognized Indian tribes when engaged in any activity that may affect them. All Federal agencies share in the trust responsibility, which arises from treaties, statutes, and executive orders.

1.2 History

A historical overview of federal tribal policy shows that the history of the relationship of the U.S. government with the tribes can be divided into the following periods:

1) Formative Years (1789-1871). The relationship of the U.S. government to Indian tribes was defined by the use of treaties during the formative years.

2) Removal of Indians to Reservations (1830-1887).

3) Allotment and Assimilation (1871-1924). The U.S. government gave allotments of land to the Indians during this period. This period was marked by the establishment of Indian schools.

4) Indian Reorganization (1924-1945). During this period, Indians were granted U.S. citizenship, and federally recognized Indian tribes were granted sovereignty.

5) Termination and Relocation (1945-1961). This period was marked by the termination of federally recognized tribal governments, government-sponsored job training programs, and attempts to move Indians off of reservations and into cities.

6) Self-determination (1961-Present). During this period, sovereignty was restored to a number of federally recognized tribes.

1.3 FHWA and Federally Recognized Tribes

FHWA has a role and a responsibility to consult with federally recognized Indian tribes on transportation projects that may affect them. FHWA works with federally recognized tribes on a government to government basis. FHWA must consult with federally recognized Indian tribes before taking any actions that may significantly or uniquely affect them. FHWA seeks to improve communication with tribal governments, and to respond effectively to tribal transportation concerns.

There are several references that deal with the government to government relationship between the U.S. government and federally recognized Indian tribes. Legal references include the April 29, 1994 Presidential Memorandum on Government-to-Government Relations, Executive Order 13175, and DOT Order 5301.1. The FHWA has produced a report entitled “FHWA Indian Task Force Report: Guidance on Relations with Indian Tribal Governments.” There is also a FHWA Memorandum from the Administrator: “Guidance on Relations with American Indian Tribal Governments.”

The April 29, 1994 Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments deals with coordination with federally recognized Indian tribes.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments. The general principles of this executive order are the recognition of the unique status of Indian tribes, the government-to-government relationship of the Federal government and tribal governments, and the support of tribal sovereignty. The Executive Order also includes criteria for policy making. The policy making criteria state that federal agencies must meet the responsibilities that arise from the unique legal relationship between the Federal government and Indian tribal governments. The Executive Order 13175 also mandates timely and meaningful input by tribal officials during the consultation process. Executive Order 13175 replaces the previous Executive Order 13084 Consultation and Coordination with Indian Tribal Governments.

FHWA interim guidance (for the implementation of Executive Order 13175) is as follows: FHWA policy is to operate within a government-to-government relationship with federally recognized tribes. FHWA policy is to carry out consultation and coordination with federally recognized tribes to the greatest extent permitted by law.

U.S. DOT Order 5301.1 is entitled “Department of Transportation Programs, Policies and Procedures Affecting American Indians, Alaska Natives and Tribes.” DOT Order 5301.1 was executed on November 16, 1999. It (delineates) the responsibilities of each DOT component. These responsibilities are as follows: 1) Improve communication; 2) Recognize tribal culture and tradition; 3) Maximize participation of tribal colleges; and 4) Avoid infringing on tribal lands.

FHWA Division Administrators are delegated authority and represent FHWA for matters in the Federal-aid program. Each FHWA Division office staff has certain responsibilities. State DOTs may have specific roles and responsibilities. FHWA Division Engineers represent the Federal Lands field offices.

FHWA’s role in tribal consultation and coordination includes regular and meaningful consultation and coordination with tribal officials in the development of Federal policies that have tribal implications. This consultation and coordination includes regulations, legislative comments, or proposed legislation.

In conclusion, the role of FHWA field offices includes coordination on statewide planning with State DOTs, tribal governments, and planning organizations. The field offices are also responsible for coordination and consultation on National Environmental Policy Act (NEPA) activities, and the consultation as part of the fulfillment of requirements of Section 106 of the National Historic Preservation Act (NHPA).

2.0 The Transportation Project Development Process

Karyn Vandervoort, FHWA's Pennsylvania Division Environmental Manager, spoke about the transportation project development process in Pennsylvania, as well as the general process followed by other states.

2.1 The Planning Process

There are many entities involved in the transportation project development process. These entities include other Federal and State agencies, the tribes, and the general public.

The origins of the transportation project development process lie in the fact that the public demands safe and efficient transportation. Transportation needs are identified on the basis of findings, which include findings of unsafe areas, and areas that are characterized by high accident rates. For publicly owned roads, these transportation problems, such as safety and congestion, are usually identified by a Metropolitan Planning Organization (MPO). MPOs are quasi-governmental agencies, usually located in metropolitan areas.

MPOs develop Long Range Transportation Plans, which take into account transportation needs for a region 20 years into the future. Once transportation projects are identified on a Long Range Transportation Plan, the MPOs give the plan to the State agency with jurisdiction over public roads. In Pennsylvania, that agency is PENNDOT.

There are two other, shorter term plans for transportation projects in Pennsylvania. The Twelve Year Transportation Program (TYP) is a 12-year plan. The Transportation Improvement Program (TIP) is a 4-year plan.

PENNDOT decides how they want to fund a project. There are many possible funding schemes. Projects can be funded with 100% Federal funding, or with 100% State funding. Most projects are funded on an 80/20 split (80% Federal funding, 20% State funding).

2.2 NEPA

All projects with Federal funding are subject to the NEPA, which is an exclusively Federal law. If there is no Federal funding for a project, NEPA does not apply. NEPA provides for open public review of transportation projects and involves the public in decision making. NEPA is regarded as an umbrella law that sets forth a process by which other Federal and State laws are taken into account, such as Section 106 of the NHPA. Section 106 of the NHPA is specific to cultural resources. Section 106 also requires public involvement in decisions regarding effects to cultural resources.

Transportation projects funded by Federal aid are divided into three classes of actions for decision making purposes and documentation. These are as follows:

- 1) Environmental Impact Statement (EIS);
- 2) Categorical Exclusion Evaluation (CEE); and
- 3) Environmental Assessment (EA).

CEEs are projects that do not have a significant impact on the environment. CEE level projects are usually categorized as “minor projects.”

EAs are more complex projects that may have the potential for environmental impacts.

EISs are projects that are anticipated to have a greater potential for environmental impacts. EIS level projects are bigger, more intense projects that usually involve the development of several design alternatives.

PENNDOT processes approximately 800 CEEs per year. At the present time, there are 12 active EA level projects and 22 active EIS level projects in Pennsylvania.

The transportation project development process includes an analysis of transportation needs, the design of a project that realizes the needs, an analysis of the potential environmental impacts, and the implementation of public involvement. Most transportation projects feature competing interests and impacts. In the transportation project development process, there is an attempt to balance environmental impacts.

2.3 Decision Making

Who makes the decisions regarding transportation projects during the transportation project development process? FHWA is the Federal agency that is authorized to disperse Federal funds. If the project is federally funded, FHWA makes the decisions. Jim Cheatham is the District Administrator for FHWA, Pennsylvania Division. There is also an Assistant District Administrator for FHWA, Pennsylvania Division. Dave Cough is the Director of Operations for FHWA, Pennsylvania Division. Below him are the positions of transportation engineer and environmental specialist.

PENNDOT’s Central Office in Harrisburg includes the Bureau of Design (BOD). The Environmental Quality Assurance Division (EQAD) of the BOD deals with the environmental aspects of transportation projects. Qualified Professionals, specialists in archaeology and architectural history, provide field-level consultation on cultural resource issues. The Qualified Professionals work with the engineering and environmental staff in the PENNDOT Engineering Districts. The Qualified Professionals must be PENNDOT employees, or must be contracted by PENNDOT. PENNDOT Central Office, specifically EQAD, oversees the Qualified Professionals, and makes policy decisions. Consultation with Federally recognized Indian tribes is conducted on a government to government basis; consultants should never contact the tribes directly.

3.0 Section 106 and the NHPA

Deborah Suci-Smith, FHWA’s Pennsylvania Division Environmental Protection Specialist, spoke about Section 106 of the NHPA, procedural issues, and tribal consultation. The main points of Deborah’s presentation are summarized below.

Tribal consultation is required under the NHPA. Section 106 of the NHPA mandates that Federal agencies must take into account the effect of an action on cultural resources through a process of decision making. The ACHP has developed implementing regulations for Section 106. The implementing regulations are set forth in 36 Code of Federal Regulations (CFR) 800. The regulations were revised between 1999 and 2001. In the revised regulations, more specific directions on tribal coordination were given to Federal agencies.

There are four basic steps in the Section 106 process, including:

- 1) Starting the process;
- 2) Identification of historic properties;
- 3) Determining Effects; and
- 4) Resolving Adverse Effects.

Part of Section 106 requirements is the identification of consulting parties. For Section 106 purposes, consulting parties could include the Pennsylvania State Historic Preservation Office (SHPO), Federally recognized Indian tribes, the ACHP, applicants for funding, those who have a legal interest in the project, and the general public.

Section 101 of the NHPA details the specific responsibilities of Federal agencies. Federal agencies must take into account potential project impacts to properties to which federally recognized Indian tribes may attach religious and cultural significance. These properties may be eligible for listing in the National Register of Historic Places (NRHP).

3.1 Complying with Section 106 in Pennsylvania

No federally recognized tribes currently reside in Pennsylvania. In order to comply with Sections 101 and 106 of the NHPA, the FHWA and PENNDOT made a good faith effort to identify federally recognized Indian tribes that have historic ties to Pennsylvania. There are currently 15 federally recognized Indian tribes that have historic ties to Pennsylvania. The government to government nature of the relationship with the Indian tribes is recognized in the consultation process. U.S. DOT Order 5301.1 states that consultation must take place, recognizing that there are cultural differences between the Federal government agencies and the tribes.

FHWA and PENNDOT have drafted a policy for consulting with federally recognized Indian tribes. This draft policy was created in consultation with the ACHP and the Pennsylvania SHPO.

3.2 FHWA and PENNDOT Roles

FHWA retains the responsibility for consultation with federally recognized Indian tribes, but has delegated certain consultation activities to PENNDOT's Qualified Professionals.

FHWA is responsible for the stewardship of the environmental, cultural, and social resources on federally funded transportation projects. The FHWA is the point of contact for tribal concerns, and recognizes the government to government relationship with the tribes.

4.0 Opening Reception

An Opening Reception for the Intertribal Summit was held during the late afternoon. Jim Cheatham, FHWA Division Administrator for the Pennsylvania Division; Allen Biehler, PENNDOT Secretary of Transportation for the Commonwealth of Pennsylvania; and Joe Link, City Engineer for the City of Harrisburg, spoke at the reception.

Secretary Allen Biehler welcomed all the Summit participants and made opening remarks. He stressed the importance of understanding potentially sensitive environmental issues as early as possible in the transportation planning process.

Secretary Biehler mentioned the Continental Highway Project, which is currently in the early planning stages. The Continental Highway Project would entail the construction of a continuous highway, stretching from Toronto to Miami. In Pennsylvania, the Continental Highway project could closely follow the route of existing Route 219, which passes through the west-central portion of the state. Existing Route 219 consists of both two- and four-lane sections. As part of the Continental Highway Project, the two-lane sections of Route 219 will be expanded to four lanes. Secretary Biehler indicated that the Continental Highway Project has the potential to affect historic resources.

Question: Who owns and maintains the roadside historical markers in Pennsylvania?

Answer: The PHMC administers the plaques. There is an application process for the creation and erection of a plaque. It is a popular program sponsored by the PHMC. The State of Pennsylvania owns and maintains the roads; PHMC maintains the plaques.

Question: How many miles of roadway are there in Pennsylvania?

Answer: There are approximately 120,000 miles of road in Pennsylvania. Approximately 80,000 miles of road are owned by local municipalities. Approximately 40,000 miles of road are owned by the State.

Joe Link welcomed all of the participants to the Intertribal Summit on behalf of Mayor Reed, and provided some introductory remarks that highlighted local tourist attractions in Harrisburg.

James Cheatham delivered opening remarks for the Intertribal Summit. Mr. Cheatham welcomed all of the participants to the Intertribal Summit, and spoke about the organization of the FHWA and the administration of the Federal-aid highway program.

Mr. Cheatham spoke about extending outreach to the tribes. He emphasized contacting federally recognized Indian tribes early in the transportation planning process for transportation projects. He stated that it is important to establish who the appropriate contact people are in each tribe for various aspects of transportation projects, and that it is important for representatives of FHWA to get to know the contact people within each tribe. He emphasized the importance of networking, face-to-face contact, and telephone calls in communication.

September 11, 2003

Karyn Vandervoort of FHWA opened the second day of the Summit with introductory remarks. A moment of silence was observed in order to commemorate the anniversary of the tragic events of September 11, 2001. Several presentations were conducted to open the day.

1.0 Consultation Responsibilities

Mary Ann Naber, FHWA's Federal Preservation Officer, spoke about the National perspective of FHWA's consultation with federally recognized Indian tribes. She reiterated remarks made during the previous day's presentations, emphasizing that FHWA is ultimately responsible for consultation. Consultation should not be done simply by placing a public notice of a project in a newspaper or by sending out a letter to inform the tribes of the project. The goal of Pennsylvania's Intertribal Summit is to be a first step in establishing how FHWA can best do business with the Indian tribes.

1.1 Geographic Information System (GIS)

FHWA is the main Federal supporter for the establishment of a nationwide GIS to identify federally recognized Indian tribes that may attach religious and cultural significance to certain geographic

areas. This GIS is currently operational in three states. The eastern states rely on ancestral ties to geographic areas (homelands) in order to identify federally recognized Indian tribes that may attach religious and cultural significance to the areas.

2.0 Review of the Pennsylvania Intertribal Summit Structure

Ron Hall of Bubar and Hall Consultants, a specialist on Federal Indian law and facilitator for the Pennsylvania Intertribal Summit, spoke about the goals and focus of the Summit. Ron stated that the Summit is intended to focus on the broad vision of consultation. The focus of the Summit should be the “bigger picture” of the relationship and consultation between Federal transportation agencies and federally recognized Indian tribes beyond just the transportation projects.

Ron stated that one method of getting the Summit participants to focus on the broad goals of the meeting is to break the group up into two caucuses to discuss specific issues. One caucus could be made up of members of the transportation and preservation communities; the other caucus could be made up of members of the federally recognized Indian tribes. The goal to keep in mind during the caucuses is: Where do the Summit participants want to be at the end of the Summit? What types of things do they want to accomplish at this meeting?

The meeting then broke into two caucuses in order to discuss various issues related to tribal consultation and coordination. One caucus included the representatives of the Federal and State transportation and historic preservation agencies, and was facilitated by Valerie Hauser, Native American Program Coordinator of the ACHP. The other caucus included the representatives of the federally recognized Indian tribes that may attach religious and cultural significance to historic properties in Pennsylvania, and was facilitated by Ron Hall of Bubar and Hall Consultants. Notes from each respective session follow.

3.0 Transportation and Preservation Community Caucus

The transportation and preservation community caucus was facilitated by Valerie Hauser, Native American Program Coordinator of the ACHP. Valerie began the meeting by stating its purpose, which was to focus on questions/concerns that would be presented simultaneously at both the Transportation and Preservation Community and Tribal Community caucuses. She then asked the audience to present their suggestions as to the purpose of the meeting. The following are some audience responses as to the purpose of the meeting:

- 1) To open lines of dialogue. PENNDOT Qualified Professionals in archaeology have not had that much contact with the tribes, but when they have, the tribes have generally been supportive.
- 2) There appear to be competing interests to the dialogue. PENNDOT Qualified Professionals in archaeology are generally interested in the scientific results of archaeological research, while the Indian community has other concerns. There is a need to blend these interests and move forward with a combined perspective in our discussions.
- 3) To build a relationship with the tribes and nations (FHWA comment).
- 4) To better understand what information is important. There is a need to know what information is considered important to the tribes/nations.

- 5) PENNDOT Qualified Professionals in archaeology are on the front line and need to refine and maintain a tribal consultation process so they know what to do at every stage.
- 6) There is a need to tap tribal memories regarding properties that are important to them. This knowledge then needs to be shared.
- 7) There is a need to get feedback from the tribes on how the consultation process is working thus far (FHWA comment).
- 8) How do tribes define homeland? PHMC needs this information to be able to do their jobs properly.
- 9) There is a need to build a relationship and then refine a process for consultation with tribes/nations. The timing aspect is especially important. Tribes need to understand the time-frame constraints for consultation in the transportation project development process.
- 10) There is a need to educate the tribes/nations about the Section 106/NEPA process (FHWA comment).
- 11) There is a strikingly negative history with Native Americans in this country, and as a result, there is a lot of distrust among the tribes/nations with the Euro-American population. There is a need to work hard to overcome this sense of distrust and show a sincere effort that is not just based on verbiage, but action (PENNDOT comment).
- 12) There is a need to develop a clear plan of action for future consultation efforts (PENNDOT comment).
- 13) There is a need to build trust with the tribes, but there is uncertainty about how to make it happen.
- 14) There is a need to identify which people from the tribes/agencies need to talk to each other, and a need to develop a process to deal with turnover at the tribes so that individual projects can move forward (PENNDOT comment).

The next part of the caucus dealt with specific concerns about the tribal consultation process and what issues the Summit should focus on. Valerie asked three specific questions of the group:

- 1) What concerns do you have concerning the Summit?
- 2) What specific concerns do you have regarding the tribal consultation process for your agency?
- 3) What specific concerns do you have regarding the tribal consultation process as it works outside your agency?

Group Responses:

- 1) There is a need to be certain that the tribes view this Summit as a serious attempt to develop consultation guidelines (PENNDOT comment).

- 2) Tribes need to be aware that there are costs and time elements that drive project schedules (PENNDOT comment).
- 3) There is currently a process in place for consulting with tribes. Are the tribes happy with this process? The tribes must have input on this.
- 4) Are the tribes concerned about the large transportation contingent at the Summit? This could be viewed as somewhat overwhelming by the tribes. Also, were the tribes consulted about the agenda for this Summit?
- 5) There is a need to be certain that no commitments are made to the tribes that cannot be kept. Native Americans do not rely on the written word, but on actions (FHWA comment).
- 6) There is a need to refine the tribal consultation process and the mechanics thereof. There is a need to understand how each tribe wants consultation to proceed. The current process must be made more efficient and effective. A visual graphic showing how this process works should be developed (PENNDOT comment).
- 7) Actions speak louder than words. The Native American Grave Protection and Repatriation Act (NAGPRA) study of 2003 indicated that 61,000 American Indian human remains are in the direct control of the museums and State DOTs. Over 350,000 items were originally taken from Native American grave sites. There is a need to follow up with the tribes on returning items from past DOT undertakings (Peter Silva, FHWA Resource Center).
- 8) There is a need to understand what the actual legal requirements are for Section 106 compliance vs. what is morally right (PENNDOT comment).

Valerie Hauser next asked the group to comment on projected accomplishments that would result from the Summit. The group responded with the following statements and suggestions:

- 1) There is a need to get comments from the tribes regarding the draft strike-off letter issued in March on consultation guidelines. PENNDOT and FHWA would like to issue this guidance in its final form soon (PENNDOT comment).
- 2) There is a need to get comments back from the tribes regarding the consultation forms that have been sent to them on individual projects.
- 3) PHMC expressed concern about geographic areas that specific tribes have concern about. Others feel that we still need to refine tribal areas of interest in the state.
- 4) PHMC expressed their concern that they be consulted concerning tribal areas of interest for collections that end up in their domain so that they can determine with whom to consult for the eventual disposition/treatment and/or curation of PENNDOT project artifact collections, as required under NAGPRA and NHPA. This information is currently not being shared with collections personnel at the PHMC. PHMC also expressed concerns about conflicting claims by tribes. What can be done if there is more than one claim for a collection?

- 5) A PENNDOT Qualified Professional in archaeology expressed concern about the mechanics of the consultation process. The current process is a start, but needs to be refined with tribal input.
- 6) There are some technical tools, such as e-mail, GIS, and the Internet, which can help with the consultation process, but how do the tribes feel about this? There is a need for tribal input on this issue (PENNDOT comment).
- 7) There is a need to understand what the appropriate treatment/treatments are for human remains. This needs to be specific to each tribe.
- 8) Who owns the artifacts? What do current State and Federal laws have to say about this?
- 9) There is a need for a process map for outlining the Section 106 consultation process. There is a need for a flow chart that will clearly demonstrate how this works.

Valerie then asked the group to comment on the future concerns/prospects for tribal consultation. The responses were:

- 1) Contact with Native Americans on specific projects in Pennsylvania indicates that the tribes do not always agree with each other on how sites should be treated. Continuing the Summit process is good, but there is a need to develop a single consultation procedure amongst all the tribes in order to avoid any misunderstanding and in order to make the process easier (PENNDOT comment).
- 2) There is a need to have this consultation process include the SHPO in addition to all the applicable agencies (FWHA, PENNDOT, etc.). Representatives of the SHPO stated that they are treated as observers and not parties to this process (SHPO/PHMC comment).
- 3) There is a need to take tribes to different parts of the state as part of the Summit process so they can alert us to specific areas that they have concerns about (FHWA comment).
- 4) There seems to be a consensus that the comments from this Summit alone will drive the future expectations for tribal consultation, but conclusions about the best path for proceeding can only be made once there is an analysis of the Summit (FHWA comment).
- 5) There is also a need to include tribal input into educational outreach programs (PENNDOT comment).
- 6) Can the tribes develop local contacts for consultation? This may make things easier for the tribes and for the agencies (PHMC comment).
- 7) There is a need to revisit Section 4(f) and what it has to say about preservation in place only as the criteria for a 4(f) use of an archaeological site. This contradicts the new regulations for the 1992 NHPA amendments, since excavation of an archaeological site is now deemed an adverse effect. Also, tribes are not consulted about sites that are considered 4(f) properties. This should be changed to comport with the amended Section 106 regulations (PENNDOT comment).

- 8) There is a need to have regional Summits that include multiple agencies. Attending multiple Summits is a real strain for the tribes.
- 9) A long-term goal should be the development of individual Memoranda of Agreement (MOAs), Memoranda of Understanding (MOUs), and Programmatic Agreements (PAs) with the tribes for tribal consultation. But, there is also a need to understand that some tribes want to keep the process informal.
- 10) There is a need to agree on timelines with the tribes for the Section 106 process when no timelines are stipulated in the regulations.
- 11) There is a need to identify best practices for future models.

Valerie Hauser asked the group to comment on the essential ingredients/components of the Section 106 tribal consultation process. The responses were:

- 1) There is a need to recruit Native people as interns within our agencies.
- 2) PHMC noted the need to identify the concerned parties in the process first, before continuing with other aspects of the tribal consultation process.
- 3) Information needs to be shared between FHWA/PENNDOT/SHPO and other resource agencies that are part of the process. The communication process needs considerable refinement.
- 4) There is a need to have a dependable and consistent process for tribal consultation.
- 5) PHMC needs to be involved in the tribal consultation process sooner in order to comment on determinations of site significance and in order to have a better understanding of potential Traditional Cultural Places (TCPs).
- 6) Funding is an issue for tribes. This problem and agency constraints to funding need to be better addressed. The tribes need to see sites in order to provide the necessary tribal input.
- 7) There is a need to train FHWA and PENNDOT staff at all levels. Upper management personnel that have little knowledge of Section 106 and tribal consultation requirements make many decisions that impact project outcomes.
- 8) There is a need for some useful guidance from FHWA to encourage and support proper consultation. This includes information about paying for consultation, etc.
- 9) Gaining trust from tribes with whom FHWA consults is critical to this process.
- 10) Other agencies need to become knowledgeable about the tribal consultation process and our process as it is developed. This includes sensitivity training so that State and government officials can interact with tribes appropriately and with respect to their cultural perspectives.

11) There is a need to have a list of decision makers from tribes and agencies. It is crucial to know who ultimately is making the critical decisions that affect tribes and transportation projects.

12) Sensitivity training should be given to all those that are involved (even remotely) in the Section 106 consultation process.

Valerie asked the participants to outline some of their goals for the Summit. The responses were:

- 1) To get everyone in agreement/on the same page.
- 2) To connect faces with names; to get to know each other.
- 3) To listen and learn.
- 4) To teach tribal members about the PENNDOT transportation process.
- 5) To learn from tribal members about their process.
- 6) To bridge the cultural gulf to some degree between tribes/Native Americans and agency personnel.
- 7) There is a need for a process map in order to clearly demonstrate the Section 106 consultation process; there is also a need for a list of participants in the process/contact list.
- 8) There is a need to get more tribal persons involved at the PENNDOT, Federal, and ACHP levels. There is a need to develop an active recruitment process.
- 9) There is a need to consider bringing in tribal members as interns at the State level.
- 10) There is a need for a road map for the tribal consultation process which documents each person's role.
- 11) There is a need to capture the perspectives of tribes that were not able to attend the Summit.
- 12) Every tribe is unique and sovereign. There is a need to be conscious/sensitive of that, and to sensitize Federal and State government officials and representatives to tribal ways and communicative style(s).
- 13) Sensitivity training should have been conducted prior to this Summit. It might have also been appropriate for FHWA to visit the tribes before inviting them to the Summit.

4.0 General Information on Tribal Consultation

Valerie Hauser presented general information on Tribal Consultation. The main points of Valerie's presentation follow.

The Federal government has a responsibility to consult with tribes on a government to government basis. This relationship goes back to treaties that were developed with the tribes. This relationship is

parallel, but different to the Federal government's relationship with the States. Out of this relationship have come the laws, and executive orders that define their relationship with the Federal government. In short, tribal chiefs are the government and therefore deserve the same respect as heads of State from foreign countries!

As a result of the above, tribes may not want to talk to staff but instead may insist discussing their issues with leaders within the Federal government. Tribes may want to talk to the President, for instance, and this may be appropriate in certain circumstances. When tribes agree to work with staff, they are being very accommodating. This can be tough for field staff that may be cut out of discussions, but is a necessary step in showing the proper respect towards tribes. Any move away from maintaining this sovereign relationship can be harmful to tribal sovereignty and is therefore viewed warily by the tribes. This is a national/global issue.

Agencies need to respect tribal wishes. There may be any number of subtleties that are not immediately clear. For instance, certain factions of the same tribes may not get along due to historical events such as the forced westward movement of tribes. Tribal members from factions that remained in the east may have adverse feelings towards those that agreed to move westward. There must be an awareness of current and historical tribal nuances. Forty percent of all tribes are organized under the Indian Relocation Records (IRR) program, while others operate under a traditional structure. Tribal structure can make immense differences in the way that tribes do business.

The Self Determination Act (638 Process) allows for tribes to dictate a lot of their own actions. Also Tribal Historic Preservation Officers (THPOs) are encouraged, but thus far there are only 38 THPOs out of 562 total tribes. One problem is that THPOs are not allowed for landless tribes.

Several states have good tribal consultation procedures with tribes. These include Georgia, Iowa, Minnesota, and Kansas. It is not necessary for this process to be formalized. Minnesota has a number of major conflicts with their tribes, but these are circumstantial. In actuality, they work closely with area tribes and meet with them regularly. The EPA website is an excellent resource for tribal consultation and can be found at <http://www.epa.gov/indian/resource/resource.htm>.

5.0 Tribal Community Caucus

The tribal community caucus was facilitated by Ron Hall of Bubar and Hall Consultants. The notes from the Tribal Community Caucus are taken from a list of items that were discussed in the caucus. The list was compiled and provided by Ron Hall, the facilitator. The notes follow.

Concerns/Questions about the Consultation Process:

- 1) Lessons on tribal context, history, and protocol.
- 2) Indians are not just history; the tribes are here today. Tribal perspectives are relevant today. Federal agencies should stop talking about Indian tribes in the past.
- 3) Education of non-Indians must be on-going, and expanded to include all staff of Federal agencies, and children. The education of children encompasses the tribal perspective of the future. The education process should be conveyed into the public school system for the children of Pennsylvania.

- 4) What is the definition of learning? When is something actually learned if it is not implemented? The consultation process should build on learning, and then move to the next level. Learning should involve a clarification of the tribal perspective, which should then be incorporated into implementation. Information that is learned should be applied during the consultation process.
- 5) There is a concern among the tribal representatives that lessons are not put into practice.
- 6) Agreements must be developed with each tribe; there should not be one agreement developed to cover all of the tribes.
- 7) Lack of historical documentation prior to this meeting. The tribal representatives would have preferred it if the information packets or binders used in the meeting would have been mailed out to them ahead of time.
- 8) Unrealistic time frames for response. The tribal representatives felt that the Federal agencies did not provide adequate time frames for their response; they want longer time frames.
- 9) People in agencies should make no assumptions from no response.
- 10) Role of oral history must be recognized in this process.
- 11) Agencies should ask each tribal nation what FHWA and PENNDOT should know about them.
- 12) Need for PENNDOT to put all of their information into tribal hands (information about tribal ties/historical connections to Pennsylvania).
- 13) There needs to be an understanding that Indian graves are people, not artifacts. Activities (archaeology) must be undertaken in a sensitive way. There should be cultural sensitivity about grave robbing and digging of graves, even if the digging is through archaeology with official sanction.
- 14) The Federal agencies should start including tribes or start the consultation with tribes as early in the transportation development process as possible.
- 15) The tribes need to know the transportation development process.
- 16) The federal agencies should address the financial requirements of tribal consultation.
- 17) A tribal advocacy position should be created within FHWA and PENNDOT.
- 18) The federal agencies should involve tribes in policy development to incorporate tribal needs and requirements up front.
- 19) There is a need to reduce the amount of paperwork involved in consultation.

What should be accomplished?

- 1) A mutual understanding of the Section 106 process — an outline of what it will take to get to a formal agreement.
- 2) Address the financial aspects of the process.
- 3) Plan for education on tribal law, protocol, and practice.
- 4) A process for reaching common understanding of the Section 106 process and consultation.
- 5) A process for reaching common understanding of the Section 106 process.
- 6) Identify policy areas that tribes and FHWA/States will develop.
- 7) A way to sponsor a person for each tribe/nation to attend a Section 106 introduction review course given by the ACHP.
- 8) Discuss the tribal notification form that is currently in use by the FHWA.
- 9) Discuss tribal notice and consultation on the Continental Highway Project in Pennsylvania.
- 10) Discussion about timing in the Section 106 process. What triggers notice to the tribes in PENNDOT?

Essential elements of the Section 106 process include meaningful verbal communication, effective time frames, flexible time frames, and tribal caucus mechanisms based on project or situation. The Section 106 process should involve the following elements:

- 1) Plan;
- 2) Policy;
- 3) Protocols;
- 4) Elements of confidentiality;
- 5) Recognition that tribes are providing a service on a government to government basis. How can tribes be adequately compensated monetarily for their part in the Section 106 process?
- 6) Confidentiality should be built in;
- 7) Contacts;
- 8) Provisions to deal with inadvertent finds;
- 9) Education component;
- 10) Effective language;

- 11) Disclosure;
- 12) Dispute Resolution and Enforcement of it; and
- 13) Tribal involvement should be before and separate from public involvement.

Where do tribal representatives see this going?

- 1) Nowhere.
- 2) Re-education involving tribal history, protocol, and culture.
- 3) No implementation.
- 4) More meetings.
- 5) More communication.
- 6) PENNDOT policy that tribes participate in and agree with.
- 7) MOAs and PAs with enforcement mechanisms and dispute resolution clauses that can be enforced.

6.0 Caucus Summary and Findings

At the conclusion of the Transportation and Preservation Community and Tribal Community caucuses, both groups reunited. The meeting reconvened, with transportation and preservation community members and tribal community members sitting together as a large group. Valerie Hauser and Ron Hall, the facilitators for the caucuses, each addressed the group, and presented the lists of the items and subjects that were discussed in each separate caucus. These items are listed in the preceding two sections of this document.

Based on the information contained in the lists, Valerie and Ron identified several concerns that are shared by both groups. These areas of common interest included education, policy development, and the development of effective communication strategies to facilitate consultation and the Section 106 process. Valerie and Ron stated that they would develop detailed lists of the areas of common concern to both groups for distribution at the September 12th session of the Intertribal Summit, and that the areas of agreement between the two groups would be a focal point of discussion at that time.

7.0 Discussion of Consultation Policy

Ira Beckerman, PENNDOT EQAD/BOD Cultural Resources Section Chief, then spoke about PENNDOT policy on Section 106 consultation with federally recognized Indian tribes. The main points of discussion are summarized below.

Ira requested suggestions for revisions to FHWA's draft consultation policy. In response, it was suggested that the draft policy should be sent out to the tribes for comment. It was also suggested that materials for meetings and/or conferences should be provided to the tribes as early as possible so that the materials can be reviewed prior to the meeting.

A representative of PHMC/SHPO asked if that agency could be copied on any comments that FHWA receives from the tribes on its draft policy. Ira indicated that PENNDOT has a parallel public involvement policy. Ira stated that revisions will be made to the draft policies, based on comments that are received. The revised policies will then be forwarded to the SHPO.

As FHWA's draft tribal consultation policy was developed, an effort was made to contact federally recognized Indian tribes with historic ties to Pennsylvania in order to determine who would be the contact person for Section 106 issues for each tribe. This led to the development of the tribal contact list that is currently in use.

A PHMC/SHPO representative suggested that when the tribes correspond with Federal agencies, the SHPO should be aware of it. However, the government to government relationship that exists between Federal agencies and federally recognized Indian tribes does not extend to State governments. The tribes do not have an obligation to share information with State agencies. Tribal representatives indicated that, for the time being, it is acceptable for PENNDOT to act on behalf of FHWA for those consultation activities for which PENNDOT has been delegated.

Representatives of PHMC indicated that that agency wants to be involved in consultation earlier in the process. PHMC representatives indicated that early involvement in the consultation process is necessary, because artifact collections from many PENNDOT projects are curated at the State Museum of Pennsylvania, which is administered by PHMC. These collections are curated on behalf of PENNDOT, and, by extension, FHWA.

A discussion of artifact ownership ensued. Owners of properties on which artifacts are found have the right of first refusal concerning artifact collections. Federally recognized Indian tribes that have historic ties to Pennsylvania have also expressed an interest in the artifact collections from certain sites. PHMC curates the artifact collections from many PENNDOT and FHWA projects at the State Museum in Harrisburg. FHWA has an obligation to consult with all of these groups concerning how, when, and where artifacts are to be curated, on a project-by-project basis.

A representative from FHWA asked if information that is provided to that agency by the tribes during the consultation process can be shared with PHMC or other agencies. The tribal response was that this should be decided on a case-by-case basis, by individual tribes.

A discussion of the discovery and excavation of Indian burials ensued. In accordance with NAGPRA, PENNDOT policy for Section 106 compliance, and the PHMC guidelines for archaeological investigations in Pennsylvania, as soon as burials are discovered during an archaeological excavation for a Federal-aid transportation project, the excavation must stop, and FHWA, the SHPO, and Federally recognized Indian tribes that may attach religious and cultural significance to historic properties in Pennsylvania must be notified. These tribes will be consulted concerning the archaeological treatment of the burials, and the disposition of the human remains. A tribal member expressed concern that burials should not be regarded as artifacts only—it should be remembered that burials are the remains of people.

PENNDOT also follows Federal standards, including the timely notification of tribes, on State-aid transportation projects with burials. NAGPRA provides for the orderly consideration and disposition of human remains.

On projects where there are adverse effects to historic resources, MOAs that document mitigation measures are developed. A section that clearly states FHWA/PENNDOT policy concerning the discovery and treatment of human remains should be included in all MOAs. This policy includes the timely notification of federally recognized Indian tribes with historic ties to Pennsylvania. It was suggested that a similar section outlining FHWA/PENNDOT policy regarding the discovery and treatment of human remains should also be included in the draft consultation policy, which will be put out for comment.

Representatives of the transportation community indicated that burials are not a common find on FHWA or PENNDOT projects. The September 11th session of the Intertribal Summit concluded with the discussion of burials.

September 12, 2003

The September 12th, 2003 session of the Intertribal Summit opened with a presentation on the web-based GIS project documenting cultural resources in Pennsylvania that was developed by PENNDOT and PHMC. The presentation was given by Pete Van Rossum, Archaeologist and GIS Coordinator with the PHMC. Pete's presentation is summarized below.

1.0 GIS

The GIS is a major component of trying to get information regarding cultural resources to people. The GIS allows remote access to PHMC's cultural resources files. Microsoft Internet Explorer 5.5 or greater is required to access the GIS.

The GIS system shows the locations of archaeological sites and historic properties on a United States Geological Survey (USGS) topographic base map. The locations of archaeological surveys and historic structures surveys can also be shown. Features such as rivers, soils, roads, counties, and municipalities can also be selected for the base maps.

The user can get data by geographic area or by historic property. If the user has the name of the historic property, a map of the property can be generated. There are also scanned NRHP nomination forms for historic properties in the data base.

The current GIS system is a baseline system. All of the recorded archaeological sites in Pennsylvania are in the system, but all of the historic properties (buildings) are not in the system. There are scanned photographs and forms for some of these resources, but not all of them. The web-based GIS is a preliminary tool for site identification and research at the moment.

PHMC is planning to get Internet access to the web-based GIS to qualified users during the fall of 2003. The system will grant cultural resource professionals access to data at virtually no cost. The eventual goal is to have an interactive system—the system will be set up so that people can correct data in the data base and inform PHMC of mistakes or additional information.

A tribal representative asked, "How will tribal governments have privileged access to the GIS system?" In response, Pete stated that access to all archaeological data on the GIS system is password protected. Access is on a limited basis, *via* password.

A PHMC representative stated that GIS layers that are specific to passwords are a future possibility. At the present time, it is planned that archaeological data will be available on a need-to-know basis. The assignment of passwords will be made on a need-to-know basis, based on demonstrated need.

A question arose as to how many levels of security are currently in use for the GIS. A PHMC representative stated that there is a very secure level that provides access to everything on the system. This level is password protected, and very few people have access to the password. There is a PHMC administrative level, which allows the bearer of the password to see and change things within the system. There is a password protected level that is read-only. When access to archaeological data is granted to qualified users, that data will be password protected, and access will be granted on a need-to-know basis.

2.0 Areas of Agreement

Ron Hall conducted a work session focusing on the areas of agreement between the transportation and preservation community and the tribal community for the Section 106 consultation process. These areas of agreement were identified by scrutinizing the lists of priorities and concerns that were generated during the separate Transportation and Preservation Community and Tribal Community caucuses that were held on September 11th. The discussion of the areas of agreement that was undertaken during the September 12th work session is summarized below.

1) Education must be a consistent element of the Section 106 environment and should meet certain objectives. These objectives are described below, and the discussion of the objectives that ensued during the work session is summarized.

- a) Educate State and Federal agencies about tribal context, history, protocol, legal requirements, and moral expectations.
- b) Include reference to tribes/nations in a modern context whose perspectives and presence are relevant today.
- c) Education should be on-going and should be made available to agency staff and the public.
- d) Education should cover the tribal perspective of ancestors, and should include cultural sensitivity training.
- e) PENNDOT should go to each tribe and seek out their perspectives.

The tribes voiced a concern that the education of Pennsylvania school children on cultural resources is not being conducted in the correct manner. Children must be educated as to who the tribes are. A protocol should be developed regarding the education of school children about cultural resources. The tribes want input into the educational program that is used for Pennsylvania school children. The tribes want to make sure that the message to school children concerning archaeology is not just to “go dig things up.”

Members of the transportation community voiced a concern about moral issues. Agency representatives want a clear understanding of where the line is between the legal requirements of NEPA and Section 106 of the NHPA and moral obligations. The agency representatives stated that

they do not want to make legal requirements the bottom line. Whose idea about what's moral should be adopted? The interpretations of the agencies and the tribes on moral issues may differ.

The agencies and the tribes may have different interpretations of preservation. From the tribal perspective, the role of oral history must be incorporated into education. This will take its own protocol. A protocol must be developed for what gets written down and what will retain its oral quality. Oral history is part of documentation for the tribes.

Tribal nations will need training on Section 106 of the NHPA, the PENNDOT project planning process, and the role of FHWA in PENNDOT projects. Mechanisms should be developed to ensure implementation of education and training. Consultants should be included in education and training.

2) Policy development will need a collaborative effort involving the tribes. A protocol needs to be developed for how policy development will proceed. Appropriate time frames for tribal input into policy development must be established, based on the circumstances of each tribe.

3) Communication could be improved as follows:

a) Start communication as early as possible.

b) Provide the tribes with background information prior to scheduled meetings or conferences.

c) Appropriate people within the tribe should be able to review materials so that the right person can be sent to the meeting.

d) Solid contact lists need to be developed for the tribes and the agencies.

e) Develop protocols that indicate who should be contacted on each type of legal issue. There is a need for a protocol as to who is contacted and who is copied on every type of legal issue. Tribal governments change every three to four years. There needs to be a process developed for establishing who to contact. There needs to be consistency in this process. It must be remembered that tribal chair people are very busy. A contact list will be developed to facilitate communication.

4) Agreements will need to be put into place with each tribe. This is consistent with government to government communication. The government to government relationship of the tribes to Federal agencies must be understood on a tribe by tribe basis.

Dispute resolution clauses must be incorporated into all agreements. These agreements must be developed on a tribe by tribe basis. Each tribe has a different type of government.

5) There is a need for an effective Section 106 process. What is the 106 process? In order for the process to be effective, there needs to be:

a) Effective communication, reasonable and flexible time frames, and agreed upon points of contact. Language definitions should be included in written communications, when necessary. Communication and education should be a two-way process. Agency officials should travel to visit each tribe/nation, if the tribe/nation agrees.

- b) There needs to be a level playing field with regard to knowledge of legal requirements and historical contexts. Shared data should include protection for culturally sensitive data. There has to be consideration for the confidentiality of culturally sensitive information. Web sites can be utilized to share information, with regard for confidentiality concerns.
- c) An effective Section 106 process will be based on agreed upon plans, policies, and protocols to provide consistency.
- d) The financial aspects of Section 106 consultation need to be addressed. The tribes want recognition of the resource demands that are being placed on them for gathering information in order to fulfill the Section 106 process. Should there be financial reimbursement for these activities?
- e) The building of trust and relationships between the agencies and the tribes is important for an effective Section 106 process.
- f) Tribal consultation should occur as early as possible in the project development process, and should be separate from the public involvement process.

3.0 Caucuses: Round Two

Following the discussion of the areas of agreement, Ron Hall brought up the topic of issues that should be addressed by the Pennsylvania Intertribal Summit. In order to address the issues and to outline the next steps required for the development of an efficient Section 106 consultation process, another caucus session was held. The group dispersed into a Transportation and Preservation Community caucus, facilitated by Valerie Hauser, and a Tribal Community caucus, facilitated by Ron Hall. The results of the caucus discussions are summarized below.

3.1 Transportation and Preservation Community Caucus

The Transportation and Preservation Community caucus was facilitated by Valerie Hauser, Native American Program Coordinator of the ACHP. Valerie began the caucus by asking what the priorities are in developing an effective and efficient Section 106 tribal consultation process. The following items were designated as priorities:

- 1) Communication should be improved through the development of a detailed contact list. This contact list should indicate who is the lead tribal contact for each Section 106 subject area.
- 2) Two-way education is needed.
- 3) Comments on FHWA's draft consultation policy are needed. How can the transportation agencies develop a policy with tribal input?
- 4) Section 106 policy development must be implemented through tribal agreements. Separate agreements regarding the Section 106 consultation process need to be worked out with each of the tribes.

- 5) There is not adequate funding to do consultation in the way it should be done. The lack of funding is an obstacle to consultation.
- 6) Work groups or committees should be formed to work on specific problems, issues, and areas.
- 7) Work groups should be formed to address the following issues:
 - a) Communication and information sharing;
 - b) Education;
 - c) Collaborative policy development;
 - d) Funding; and
 - e) The use of technology in the Section 106 process.

3.2 Tribal Community Caucus

The Tribal Community caucus was facilitated by Ron Hall of Bubar and Hall Consultants. What should the proposed focus for the next session or meeting be? What are tribal concerns?

- 1) Policy development should be addressed at the next meeting.
- 2) When will tribal consultation take place in the transportation development process?
- 3) There should be a process in place to address consultation on inadvertent archaeological discoveries.
- 4) How does policy get implemented within the PENNDOT structure?
- 5) How will policy changes be implemented?
- 6) Another meeting should be convened. What is the time frame for the next meeting? Should it be held in late winter or early spring?
- 7) There should be an exchange of information between now and the time of the next meeting. Information pertaining to the next meeting should be distributed to the tribes prior to the meeting for review.

4.0 The Results

The members of the Transportation and Preservation Community and the Tribal Community reconvened as a group to discuss the results of the caucus sessions. This discussion resulted in several areas of agreement concerning necessary next steps in the facilitation of the Section 106 consultation process.

- 1) The group agreed that tribal input is needed on policy development for Section 106 consultation procedures.

- 2) The group agreed that separate agreements for consultation need to be worked out for each tribe.
- 3) The group agreed that work groups should be formed to address the issues identified by the Transportation and Preservation Community caucus (see items 7a through 7e in the section on the Transportation and Preservation Community caucus, above). The group agreed that the tribes should be invited to participate in the work groups. The tribes requested that a letter inviting them to participate in the work groups be sent to them. The transportation agency representatives stated that tribes that were not able to attend the Summit should be contacted so that they can join the process.
- 4) The group agreed that another meeting should be convened; a likely time frame for this meeting is that it should be held within 6 to 8 months of the Summit.

The Pennsylvania Intertribal Summit was concluded with a prayer offered by Linda Poolaw of the Delaware Nation of Oklahoma.

Pennsylvania Intertribal Summit Attendee List

Name	Contact Information	Responsibilities
Christine Abrams	tonsene@buffet.net Phone: (716) 542-4244	Tonawanda Seneca Nation
Hector Abreu (Cintron)	habreu@achp.gov Phone: (202) 606-8517 FAX: (202) 606-3072	GSA liaison Advisory Council on Historic Preservation
Joe Baker	josebaker@state.pa.us Phone: (717) 705-1482 FAX: (717) 772-0834	PENNDOT Education, Publications, Communications
Jerry Barkdoll	Jerry.Barkdoll@fhwa.dot.gov Phone: (410) 962 -0051 FAX: (410) 962-3419	Environmental Protection Specialist FHWA, Resource Center/Baltimore
Paul Barton	pbarton@nations.network.net Phone: (918) 542-6609 FAX: (918) 542-3684	Cultural Representative Seneca-Cayuga tribe of Oklahoma
Ira Beckerman	ibeckerman@state.pa.us Phone: (717) 772-0830 FAX: (717) 772-0834	PENNDOT Cultural Resources Section Chief
Lisa Benack	benacklisa@netzero.net Phone: (215) 529-7089 FAX:	Consulting Archaeologist, Skelly and Loy, Inc.
Jeffrey Berna	Jeffrey.Berna@fhwa.dot.gov Phone: (801) 963-0078 Ext. 235 FAX:	Environmental Specialist FHWA, Utah Division
Allen Biehler	abiehler@state.pa.us Phone: (717) 787-5574 FAX: (717) 787-5491	PENNDOT Secretary of Transportation
Melinda Bowen	Melinda.Bowen@fhwa.dot.gov Phone: (717) 221-4516 FAX: 717-221-3494	Area Engineer FHWA, Pennsylvania Division
Kurt Carr	kcarr@pa.us.gov Phone: (717) 783-9926 FAX:	Division Chief, Archaeology and Protection Pennsylvania Historical and Museum Commission
Wade F. Casey	Wade.Casey@fhwa.dot.gov Phone: (202) 366-9487 FAX:	IRR Program Engineer FHWA, Federal Lands Headquarters
James Cheatham	James.Cheatham@fhwa.dot.gov Phone: (717) 221-3461 FAX:	Division Administrator FHWA, Pennsylvania Division
Tashia Clemens	Tashia.Clemens@fhwa.dot.gov Phone: (614) 280-6841 FAX:	Environmental Specialist FHWA, Ohio Division
David Cough	David.Cough@fhwa.dot.gov Phone: (717) 221-3411 FAX: (717) 221-3494	Director of Operations FHWA, Pennsylvania Division

Name	Contact Information	Responsibilities
Jean Cutler	jecutler@state.pa.us Phone: (717) 705-4035 FAX: (717) 772-0920	Director of the Bureau for Historic Preservation, PHMC
Dain Davis	josedavis@state.pa.us Phone: (814) 696-7223 FAX: (814) 696-7149	PENNDOT Environmental Manager, District 9-0
Stephen DelSordo	sdelsordo@achp.gov Phone: (202)-606-8503 FAX:	USDA Liaison Advisory Council on Historic Preservation
Kathy Dimpsey	Kathy.Dimpsey@fhwa.dot.gov Phone: (717) 221-3716 FAX: (717) 221-3494	Program & Quality Engineer, Planner, FHWA, Pennsylvania Division
Henry Droughter	Henry.Droughter@fhwa.dot.gov Phone: 717-221-3705 FAX: (717) 221-3494	Civil Rights Specialist FHWA, Pennsylvania Division
Rhonda Fair	Rhonda@boboproject.com Phone: (405) 247-1192/2448 FAX:	NAGPRA Coordinator Delaware Nation of Oklahoma
Wayne Fedora	Wayne.Fedora@fhwa.dot.gov Phone: (717) 221-3440 FAX: (717) 221-3494	Area Engineer FHWA, Pennsylvania Division
Virginia Feigles-Karr	hkarr@state.pa.us (570) 368-4380 FAX: (570) 368-4311	PENNDOT Project Manager, District 3-0
Diane Fenicle	dfenicle@ascgroup.net (717) 939-0381 FAX:	Consulting Archaeologist, ASC Group
Chan Funk	pfunk@state.pa.us Phone: (717) 772-0924 FAX: (717) 772-0920	Archaeologist, Archaeology and Protection Pennsylvania Historical and Museum Commission
Freeman Gibson	e-mail: Phone: (315) 498-4068 FAX:	Chief Onondaga Indian Nation
Catherine Glidden	Cathy.Glidden@fhwa.dot.gov Phone: (202) 366-2655 FAX:	FHWA Headquarters Archaeologist, Environmental Protection Specialist
Ronald C. Hall	Ronald.Hall@colostate.edu Phone: (970) 491-8653 FAX: (970) 491-3502	Director, Tribal Technical Assistance Program; Summit Facilitator
Brian Hare	bhare@state.pa.us Phone: (717) 787-5023 FAX: (717) 705-2379	Division Chief for Highway Quality Assurance Division, PENNDOT Bureau of Design
Valerie Hauser	vhauser@achp.gov Phone: (202)-606-8503 FAX:	Native American Program Coordinator Advisory Council on Historic Preservation

Name	Contact Information	Responsibilities
Mike Herron	Mike.Herron@fhwa.dot.gov Phone: (717) 221-3759 FAX: (717) 221-3709	Director of Technical Services FHWA, Pennsylvania Division
Amy Hilderbrand	amyh@astribe.com Phone: (405) 275-4030 x 124 FAX:	Administrative Assistant Absentee -Shawnee Tribe of Oklahoma
Gary Hoffman	gahoffman@state.pa.us Phone: (717) 787-6875 FAX: (717) 346-0346	PENNDOT, Deputy Secretary for Highway Administration
Darren S. Jimerson	e-mail: Phone: (716) 542-1418 or 542-4244 FAX:	Chief Tonawanda Seneca Nation
Janet Johnson	janjohnson@state.pa.us Phone: (717) 705-0869 FAX:	Pennsylvania Historical and Museum Commission, Associate Curator of Archaeology, State Museum
Jim Kendter	jkendter@state.pa.us Phone: (570) 368-4200 FAX: (570) 368-4321	PENNDOT District Executive, District 3-0
Daryl Kerns	dkerns@state.pa.us Phone: (717) 787-0185 FAX: (717) 705-2379	PENNDOT Engineer, Highway Quality Assurance Division, Bureau of Design
Chris King	chriking@state.pa.us Phone: (570)368-4255 FAX: (570)-368-4311	PENNDOT Assistant Environmental Manager, District 3-0
Leland Kissinger	e-mail: Phone: FAX:	
Becky Knapp	e-mail: knap8860@wlu.ca Phone: (717) 705-1482 FAX:	PENNDOT, Intern, Cultural Resources Group
Chris Kula	ckula@state.pa.us Phone: (717) 783-9700 FAX: (717) 772-0834	PENNDOT Archaeologist, Central Office
Barb Landis	blandis@epix.net Phone: (717)249-7610 FAX:	Cumberland County Historical Society
Curtis Lazore	Ronathahionni@aol.com Phone: 518-358-3381/3326 FAX: 518-358-3488	Coordinator Haudenosaunee Cultural Resource Protection Program c/o Mohawk Nation Council of Chiefs
Joe Link	e-mail: Phone: (717) 255-3091 FAX: (717) 255-3078	City of Harrisburg, Bureau of Engineering, Office of the Mayor
Jennifer Makaseah	Jennifer@astribe.com Phone: (405) 275-4030 x 124 FAX:	Director, Cultural Preservation Absentee -Shawnee Tribe of Oklahoma

Name	Contact Information	Responsibilities
Ross Mantione	Ross.Mantione@fhwa.dot.gov Phone: (717) 221-3465 FAX:	Environmental Specialist FHWA, Pennsylvania Division
Jeanette Mar	Jeanette.Mar@fhwa.dot.gov Phone: (609) 637-4203 FAX:	Environmental Coordinator FHWA, New Jersey Division
Daisy Mather	Daisy.mather@faa.gov Phone: (718) 553-2511 FAX: (718) 995-5694	Environmental Team Leader Eastern Region, FAA
Tom McCulloch	tmucculloch@achp.gov Phone: (202)-606-8503 FAX:	Program Analyst Native American Program Services Advisory Council on Historic Preservation
Susan McDonald	sumcdonald@state.pa.us Phone: (717) 772-1024 FAX: (717) 772-0834	PENNDOT Chief, Environmental Quality Assurance Division, Bureau of Design
Steven McDougal	smcdougal@state.pa.us Phone: (717) 772-0923 FAX: (717) 772-0920	Archaeologist, Archaeology and Protection Pennsylvania Historical and Museum Commission
Jamie McIntyre	jmcintyre@state.pa.us Phone: 570-963-4364 FAX: 570-963-4014	PENNDOT Archaeologist, District 4-0
Kathleen Mitchell	snithpo@nycountry.com Phone: (716) 945-9427 FAX: 716-945-0531	Tribal Historic Preservation Officer Seneca Nation of Indians
MaryAnn Naber	MaryAnn.Naber@fhwa.dot.gov Phone: (202) 366-2060 FAX: (202) 366-7660	Federal Preservation Officer FHWA
Brice Obermeyer	bobermyer@delwaretribe.org Phone: 918-336-5272 X 558 FAX:	Delaware Tribe of Indians, Oklahoma
Stuart Patterson	e-mail: Phone: (716) 298-5114 FAX:	Chief Tuscarora Nation
Brian Patterson	bpatterson@oneida-nation.org Phone: 315-829-8327 FAX:	Bear Clan Representative Oneida Indian Nation
Chris Perry	chrperry@state.pa.us Phone: (717) 787-5222 FAX: (717) 783--4788	PENNDOT Environmental Manager, District 8-0
Linda Poolaw	e-mail: Phone: (405) 247-2448 FAX:	NAGPRA Representative Delaware Nation of Oklahoma
Patricia Remy	premy@state.pa.us Phone: (412) 429-5084 FAX: (412) 429-5069	PENNDOT Environmental Manager, District 11-0

Name	Contact Information	Responsibilities
Linda Ries	lries@state.pa.us Phone: (717) 787-3023 FAX:	Bureau of Archives and History
Pete Van Roussum	pvanrossum@state.pa.us Phone: (717) 705-0544 FAX:	Archaeologist/GIS Coordinator, Archaeology and Protection Pennsylvania Historical and Museum Commission
Kara Russell	krussell@state.pa.us Phone: (717) 705-1484 FAX: (717) 772-0834	PENNDOT Architectural Historian, Central Office
Dean Schreiber	dschreiber@state.pa.us Phone: (717) 787-3310 FAX: (717) 787-6461	PENNDOT Acting Chief Engineer
Jim Scouten	James.Scouten@fhwa.dot.gov Phone: (410) 962-2544 FAX:	Field Legal Director, FHWA Le gal Services
Eric Scuoteguazza	escuotegua@state.pa.us Phone: 724-357-2081 FAX: 724-357-1905	PENNDOT Archaeologist, Districts 9-0, 10-0, and 12-0
Mark Shaffer	mshaffer@state.pa.us Phone: (717) 783-9900 FAX:	Archaeologist, Archaeology and Protection Pennsylvania Historical and Museum Commission
Scott Shaffer	scoshaffer@state.pa.us Phone: 814-765-0456 FAX: 814-765-0424	PENNDOT Archaeologist, Districts 2-0 and 3-0
Danielle Shellenberger	dashellenb@state.pa.us Phone: (717) 783-6503 FAX: (7217) 772-2569	PENNDOT Environmental Planner, Environmental Quality Assurance Division, Bureau of Design
Rachel Shepherd	rashepher@state.pa.us Phone: (717) 214-8782 FAX:	PENNDOT, Intern, Policy Office
Peter Silva	Peter.Silva@fhwa.dot.gov Phone: (410) 962-0629 FAX:	Civil Rights Specialist FHWA Resource Center
Marion R. Sizemore	sizemoreed@hotmail.com Phone: (918) 542-6609 FAX: (918) 542-3684	Environmental Director Seneca-Cayuga Tribe of Oklahoma
Cathy Spohn	cspohn@state.pa.us Phone: (610) 205-6711 FAX: (610) 205-6914	PENNDOT Archaeologist, District 6-0
Noel Strattan	dstrattan@state.pa.us Phone: (717) 772-4519 FAX: (717) 772-0920	Archaeologist, Archaeology and Protection Pennsylvania Historical and Museum Commission
Deborah Suciú-Smith	Deborah.Suciú.Smith@fhwa.dot.gov Phone: (717) 221-3785 FAX: (717) 221-3494	Environmental Protection Specialist FHWA, Pennsylvania Division

Name	Contact Information	Responsibilities
Wendy J. (Gonyea) Thomas	e-mail: Phone: 315-492-1922 FAX: 315-469-4717	Communications Liaison, Onondaga Indian Nation
Leonard Tiger	leonardt@astribe.com Phone: (405) 275-4030 FAX:	Tribal Representative Absentee -Shawnee Tribe of Oklahoma
Paul Tufts	Paul.Tufts@fhwa.dot.gov Phone: (708) 283-3540 FAX:	Environmental Program Specialist FHWA, Resource Center, Olympia Fields, Illinois
Karyn Vandervoort	Karyn.Vandervoort@fhwa.dot.gov Phone: (717) 221-2276 FAX: (717) 221-3494	FHWA, Pennsylvania Division Environmental Manager
Joe Verbka	jverbka@state.pa.us Phone: 814-678-7098 FAX: 814-678-7030	PENNDOT Archaeologist, Districts 1-0 and 11-0
Steve Warfel	swarfel@state.pa.us Phone: (717) 783-2887 FAX:	Pennsylvania Historical and Museum Commission, Curator of Archaeology, State Museum
John Wesley	jwesley@state.pa.us Phone: (717) 787-2891 FAX: (717) 783-9924	Interim Executive Director Pennsylvania Historical and Museum Commission
Corina Williams	cwilliams@oneidanation.com Phone: (920) 490-2096 FAX: 920.490.2099	Tribal Historic Preservation Officer Oneida Tribe of Indians of Wisconsin
Dave Willis	dwillis@paturnpike.com Phone: (717) 939-9551 FAX:	Pennsylvania Turnpike Commission
Susan Zacher	szacher@state.pa.us Phone: (717) 783-9920 FAX:	Historic Building Reviewer, Archaeology and Protection Pennsylvania Historical and Museum Commission