

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
AND THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
REGARDING CONSULTATION ON STATE-FUNDED
TRANSPORTATION PROJECTS IN PENNSYLVANIA**

WHEREAS, the Pennsylvania Department of Transportation (PennDOT) is responsible for construction and maintenance of Commonwealth-owned roads and bridges; and

WHEREAS, state-funded, licensed, and permitted transportation projects and activities may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, under the Pennsylvania History Code (37 Pa C.S.A. §§ 507- 510), PennDOT is required to consult with the Pennsylvania Historical and Museum Commission (PHMC) when projects may affect properties eligible for the Pennsylvania Register of Historic Places; and

WHEREAS, Section 501 and 502 of the Administrative Code of 1929, as amended, (71 P.S. §§ 181 and 182) require Commonwealth departments and agencies to coordinate their work and activities with other Commonwealth departments and agencies; and,

WHEREAS, the National Register of Historic Places and the Pennsylvania Register of Historic Places are considered equivalent with regard to eligible properties in Pennsylvania, and the term National Register will be used throughout this MOU; and

WHEREAS, PennDOT and the PHMC have signed a *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania (March 18, 2010)* (Federal PA) under Section 106 of the National Historic Preservation Act (NHPA) 16 U.S.C. § 470 (Attachment 1); and

WHEREAS, PennDOT intends to fulfill its obligations under the Pennsylvania History Code by utilizing similar processes and procedures specified in the Federal PA for considering the effects of state- funded transportation projects on historic properties; and

WHEREAS, historic properties, as defined in 36 CFR 800.16(l), will apply to this MOU; and

WHEREAS, any state-funded transportation project that requires a permit from the United States Army Corps of Engineers (USACE), U.S. Coast Guard, or any other federal agency, will follow the requirements of Section 106 of the NHPA; and

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

NOW, THEREFORE, the parties to this Memorandum set forth the following as the terms and conditions of their understanding:

Stipulations

PennDOT shall ensure that the following measures are carried out:

I. Responsibilities and General Requirements

- A. PennDOT shall employ professionally qualified personnel sufficient to implement this MOU. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are Pennsylvania State Employees and will meet the Secretary of the Interior's Standards for Professional Qualifications (36 CFR 61) in the fields of archaeology or architectural history.
- B. The current Historic Bridge Inventory and Evaluation will provide individual determinations of eligibility for bridges 20 ft. and greater except where new information is brought forward to cause a reconsideration of this determination. With the exception of covered bridges, stone arch bridges, and closed spandrel concrete arch bridges, all other bridges or culverts less than 20 ft. in length are considered not individually eligible for the National Register except where new information is brought forward to cause an evaluation of a particular bridge in one of these categories. Consideration of whether or not a bridge contributes to an historic district will be made at the time of a project.

II. Project Review

- A. PennDOT will follow the process described in Stipulations III-IX and Appendix C of the Federal PA (excluding involvement by the Federal Highway Administration (FHWA) and the Advisory Council on Historic Preservation), and the procedures in its *Cultural Resources Handbook* (Publication 689) for review of state-funded projects.
- B. PennDOT will observe the following requirements for maintenance projects.

State-funded maintenance projects are subject to the Pennsylvania History Code and may have an effect on historic properties. Most maintenance projects will be considered exempt from any additional review and documentation except for the

following specified projects and activities. The PennDOT Maintenance Manager, District Bridge Engineer, or Project Manager will contact the District Environmental Manager when any of the following projects or activities will be completed by PennDOT maintenance forces:

- a) replacement, rehabilitation, or maintenance/preservation of bridges that are over 50 years old, unless the structure is categorically not eligible per Stipulation I.B, or was previously determined not eligible for the National Register;
- b) maintenance activities that could affect stone retaining walls, old tree rows, or building ruins including foundations or other features.

The District CRP may exempt any of these maintenance projects or activities from further review if the conditions of Appendix C in the Federal PA are met; otherwise, the CRP will follow the process in the Federal PA outlined in II.A above.

C. Procedure for Resolving Adverse Effects

If the District CRP determines that a project will have an adverse effect on historic properties, the CRP will issue a finding of Adverse Effect. The CRP will consult with the PHMC, and other consulting parties, to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects. All involved parties will have 30 days to provide comment.

If PennDOT and the PHMC agree on how adverse effects will be resolved, they will execute a Letter of Understanding (LOU) that stipulates any measures undertaken to mitigate adverse effects. The LOU will be signed by duly authorized signatories of PennDOT and the PHMC or their designees and be reviewed and approved by the Office of Chief Counsel.

If agreement on the resolution of adverse effects is not reached, the CRP may request a legal opinion from PennDOT's Office of Chief Counsel on how to proceed. The PHMC may also request an opinion from its legal counsel.

D. Emergency Procedures

When an event, disaster, or occurrence produces an immediate threat to life or property, PennDOT will follow the emergency procedures in Chapter XIII of the Cultural Resources Handbook (Pub. 689).

III. Highway Occupancy Permits

- A. The following process applies to Highway Occupancy Permit (HOP) applications submitted to PennDOT in accordance with Title 67 Chapter 441 of the Pennsylvania Code, in regards to access and occupancy of State highways by driveways and local roads. Other sections of this MOU do not apply to the HOP process.

- B. The applicant or PennDOT shall determine whether the permitted work will include construction of an auxiliary lane or other widening of the improved area or whether additional right-of-way will be required by PennDOT. If so, PennDOT will request the applicant to submit information to PHMC for its review. The submittal should specifically identify the proposed access location and provide the PHMC a United States Geological Survey (USGS) 7.5 minute topographic quadrangle map specifically identifying the property as well as copies of plans of both proposed and existing conditions. The cover letter should include narrative that describes the project in detail. The PHMC will provide a written response to the applicant within 15 days of this initial notification and copy the appropriate PennDOT district.
- C. If an existing archaeological site or a location having high potential for an archaeological site will be affected by the project's area of ground disturbance, an archaeological survey may be required of the applicant. If a site is located in the area of ground disturbance, additional requirements may include a significance evaluation of the site and avoidance, minimization or mitigation efforts if the site proves significant in terms of National Register criteria. If a historic building, site, structure or district will be affected, and the effect is adverse, additional consultation will be necessary to avoid, minimize or mitigate that effect. The PHMC will respond within 30 day time frames to all of the applicant's submittals beyond the initial notification. PennDOT will be copied on all correspondence and invited to participate in any consultation to resolve adverse effects.

IV. Review and Monitoring of the MOU

- A. The PHMC may monitor activities carried out pursuant to this MOU to ensure compliance with the Pennsylvania History Code. PennDOT shall cooperate with the PHMC in carrying out the monitoring effort. The PHMC may coordinate its monitoring in conjunction with any FHWA reviews of projects completed under the Federal PA.
- B. On a periodic basis and at a time mutually agreed upon, PennDOT will meet with the PHMC to review the implementation of the MOU, to discuss projects, or to suggest improvements.
- C. If at any time the Federal PA is modified or amended, PennDOT will consult with the PHMC to determine if changes are warranted to this MOU. PennDOT and PHMC will amend the MOU as necessary.
- D. If at any time the Federal PA is terminated, PennDOT will consult with the PHMC to determine whether this MOU should be terminated or amended. If the MOU is terminated, PennDOT will consult with the PHMC on a process or procedure for fulfilling its obligations under the Pennsylvania History Code.

V. Dispute Resolution

- A. Except as provided in Stipulation V. B (below), should the PHMC object within 30 days to any actions proposed or findings submitted for review, PennDOT and the PHMC shall consult to resolve the objection. If PennDOT determines that such objection(s) cannot be resolved, PennDOT and PHMC shall submit the dispute to the Office of General Counsel for final resolution.
- B. If the PHMC objects to a National Register eligibility determination made by PennDOT and that objection cannot be resolved through consultation, PennDOT or the PHMC may obtain a determination of eligibility from the Keeper of the National Register.

VI. Amendment

PennDOT or the PHMC may request that this MOU be amended, whereupon these parties shall consult to consider such amendment. Any changes, corrections or additions to this Memorandum will be in writing in the form of a letter from either PennDOT or the PHMC to the other setting forth therein the proposed change, correction or addition, approved by endorsement of the duly authorized signatories of PennDOT and the PHMC. The terminology and provision of such letter must conform to the requirements of the Office of General Counsel pertaining to Memoranda of Understanding. In addition, such letter must provide that the terms and conditions of this Memorandum of Understanding that are not modified thereby remain in full force and effect. Such letter shall become a modification to this Memorandum by mutual agreement signed by the parties.

VII. Termination

PennDOT or the PHMC may terminate this MOU by providing thirty (30) days written notice to the other party, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, PennDOT will consult with the PHMC on a process or procedure for fulfilling its obligations under the Pennsylvania History Code.

VIII. Duration


PennDOT, and the PHMC will review this MOU every ten (10) years from the date of execution for modifications or termination. If no changes are proposed and no party objects, the term of the MOU will be extended automatically for another ten years without re-execution.

IX. Contractual Rights and Obligations

This Memorandum is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties.


Execution and implementation of this MOU evidences that the PennDOT has satisfied its responsibilities under the Pennsylvania History Code for state funded projects.

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER


Jean Cutler, Director
Bureau for Historic Preservation

9/20/2011
Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION


R. Scott Christie, PE
Deputy Secretary for Highway Administration

9/30/11
Date

OFFICE OF COMPTROLLER OPERATIONS



10/12/11
Date

Approved as to Legality and Form

BY <u></u>	Date <u>9/22/11</u>
for Chief Counsel	<u>9/21/2011</u>
BY <u></u>	Date <u>9/23/11</u>
Deputy General Counsel	
BY <u></u>	Date <u>10/4/11</u>
Deputy Attorney General	