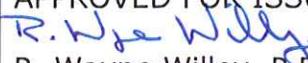


<p>OS-299 (7-08)</p>  <p>pennsylvania DEPARTMENT OF TRANSPORTATION www.dot.state.pa.us</p>	<p>TRANSMITTAL LETTER</p>	<p>PUBLICATION: 689</p> <hr/> <p>DATE: March 22, 2013</p>
<p>SUBJECT:</p> <p style="text-align: center;">Publication # 689 The Transportation Project Development Process: Cultural Resources Handbook March 2013</p>		
<p>INFORMATION AND SPECIAL INSTRUCTIONS:</p> <p>These guidelines superseded PennDOT Publication 689: The Transportation Project Development Process: Cultural Resources Handbook, dated October 2012. An electronic copy of the Handbook is available through the PennDOT Environmental Policy Development (EPD) Section and PennDOT's online Publication Library. Please note that the forms links in the October 2012 release no longer work. To obtain the forms from Publication 689, this edition must be used.</p> <p>Below is a link to the revised handbook . This handbook will be effective April 1, 2013.</p> <p>ftp://ftp.dot.state.pa.us/public/PubsForms/Publications/PUB%20689.pdf</p>		
<p>CANCEL AND DESTROY THE FOLLOWING:</p> <p>This handbook supersedes the Pennsylvania Department of Transportation Publication #689, Cultural Resources Handbook that was dated October 2012. Please note that forms links in the October 2012 release no longer work.</p>	<p>ADDITIONAL COPIES ARE AVAILABLE FROM:</p> <p><input type="checkbox"/> PennDOT SALES STORE (717) 787-6746 phone (717) 787-8779 fax ra-penndotsalesstore@pa.gov</p> <p><input checked="" type="checkbox"/> PennDOT website - www.dot.state.pa.us <i>Click on Forms, Publications & Maps</i></p> <p><input type="checkbox"/> DGS warehouse (PennDOT employees ONLY)</p> <hr/> <p>APPROVED FOR ISSUANCE BY:  R. Wayne Willey, P.E. <i>For</i> Acting Director Bureau of Project Delivery</p>	

*Pennsylvania Department
Of Transportation*

*The Transportation Project
Development Process:
Cultural Resources Handbook*

Publication No. 689

Preface

This Handbook has been prepared as a guidance document for use in the consideration of cultural resources in the development of transportation projects by understanding the requirements of Section 106 of the National Historic Preservation Act of 1966 (16 USC 470), Section 4(f) of the U.S. Department of Transportation Act of 1966, the National Environmental Policy Act of 1969 (NEPA), and the State History Code (Act 70, Title 37 PA Consolidated Statutes). The Handbook is intended to allow for flexibility in consideration of cultural resources according to the nature of the undertaking and its potential for affects to properties listed on, or eligible for listing on, the National Register of Historic Places. **This Handbook is for guidance and informational purposes only; it is not regulatory. This Handbook is effective as of January 3, 2013.**

Guidance provided in this handbook supersedes guidance provided in Publication 689, The Transportation Project Development Process: Cultural Resources Handbook, November 2010. Major changes include: guidance for implementing the State History Code Memorandum of Understanding (October 4, 2011); revised guidance for the treatment of cultural resources under a United States Army Corps Of Engineers permit; treatment of cultural resources during emergencies; integration of Project PATH into public involvement and consulting parties coordination; clarification of feasibility analyses for historic bridges; and, addition of the Work Breakdown Structure (WBS) codes from the Engineering and Construction Management System (ECMS). Information in this handbook should not supersede existing design standards as reflected in existing Pennsylvania Department of Transportation (PennDOT) policies and procedures.

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I. INTRODUCTION

This handbook describes the principles, techniques and procedures for consideration of cultural resources in the development of transportation improvement projects for the Pennsylvania Department of Transportation (PennDOT), hereinafter referred to as “PennDOT”. It is PennDOT’s policy to develop timely transportation plans, programs, and projects that seek to balance social, economic, and environmental concerns. While seeking improved safety, access, mobility, and efficient movement of people and goods, PennDOT also seeks to implement projects that improve the quality of life in Pennsylvania and that foster development of sustainable and livable communities. Pennsylvania’s historic towns, buildings, farms, and bridges define Pennsylvania and, to many people, are essential elements to a good quality of life. To the degree possible, PennDOT must consider the protection of Pennsylvania’s historic heritage and make an effort to avoid effects to those historic properties listed, or eligible for listing, on the National Register of Historic Places (NRHP). This obligation is codified in state and federal laws and regulations, the most significant of which are outlined below.

A. GOVERNING LAWS AND REGULATIONS

Section 106 of the National Historic Preservation Act of 1966 (16 USC 470), amended 1992: Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The process for fulfilling Section 106 is outlined in regulations issued by the ACHP. Revised regulations, entitled *Protection of Historic Properties*, 36 CFR 800, became effective January 11, 2001, with an amendment effective August 5, 2004. The regulations require the federal agency to consult with the State Historic Preservation Office (SHPO). In Pennsylvania, the SHPO is the Pennsylvania Historical and Museum Commission (PHMC). *For ease of language, this handbook will hereafter refer to the PHMC for actions and activities under the Section 106 regulations that involve the SHPO.*

<p>NOTE: PHMC is the SHPO in Pennsylvania; therefore PHMC will be used when discussing the SHPO throughout the remainder of the document.</p>

The Federal Highway Administration (FHWA) is responsible for fulfilling the requirements of Section 106 on all highway projects they fund in Pennsylvania. This includes traditional highway development and improvement projects, as well as projects receiving funds under the Transportation Enhancements (TE) program. The FHWA has, in turn, delegated much of the process for implementing the Section 106 regulations to PennDOT through a Programmatic Agreement (PA) executed on March 18, 2010 (*Appendix I*). *This hereafter will be referred to as the “Section 106 PA” throughout this handbook.*

Section 110 of the National Historic Preservation Act of 1966 (16 USC 470), amended 1992: Section 110 of the NHPA specifies the obligations of federal agencies with historic properties under their jurisdiction or control. Section 110 also provides particular protection for National Historic Landmarks. Section 110 indicates that, “Prior to the approval of any Federal

undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.”

Section 4(f) of the U.S. Department of Transportation Act of 1966:

Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966 (49 USC Section 303) offers protection for historic properties and publicly owned parks, recreation areas, and wildlife or waterfowl refuges. Unlike Section 106, however, Section 4(f) applies only to USDOT agencies, including FHWA. Section 4(f) states that the Secretary of Transportation can only approve a transportation program or project requiring the use of publicly owned parks, recreation areas, and wildlife or waterfowl refuges and historic properties eligible for, or listed on the NRHP, if:

- (a) There is no feasible and prudent alternative to using that property and the program or project includes all possible planning to minimize harm to the park, recreation area, refuge, or historic property resulting from the use; or
- (b) The use, including any measures to minimize harm (such as any avoidance, minimization, or enhancement measures) would have a de minimis impact on the property.

PennDOT’s *Section 4(f) Handbook* (Publication 349) provides greater detail on Section 4(f) and important differences between determining “effects”, under Section 106, and “use” under Section 4(f).

National Environmental Policy Act of 1969 (NEPA):

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies to identify and consider the significant environmental, cultural, and socioeconomic impacts of projects. Cultural resources are one of the resources evaluated during the NEPA process. NEPA establishes three categories of environmental review actions: Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS). NEPA requires that the public and resource agencies be provided with the opportunity to comment on the identified environmental impacts of the project for EIS and EA level projects. Please refer to PennDOT’s *Design Manual 1B* (Publication 10B) for more information on how PennDOT implements NEPA.

State History Code (Act 70, Title 37 PA Consolidated Statutes):

Section 507 of Act 70 requires PennDOT to “cooperate fully with the commission in the preservation, protection and investigation of archaeological resources” by notifying the Commission before undertaking any Commonwealth or Commonwealth-assisted permitted or contracted projects that may affect archaeological sites. Section 508 of the Act requires PennDOT to consult the Commission, namely the Pennsylvania Historical and Museum Commission (PHMC), and seek their advice on possible alternatives to demolishing, altering, or transferring any property under its ownership or control that is, or may be, of historical, architectural, or archaeological significance. Section 508 also requires PennDOT to “initiate measures and procedures to provide for the maintenance by means of preservation, rehabilitation

or restoration of historic resources under their control or ownership that are listed on or are eligible for the Pennsylvania Register of Historic Places.” The Pennsylvania register is synonymous with the listing of resources eligible for listing on the NRHP. Section 508 requires PennDOT to “Institute procedures and policies to assure that their plans, programs, codes, regulations and activities contribute to the preservation and enhancement of all historic resources in this Commonwealth.” Section 510 requires PennDOT to consult the Commission “on the design and proposed location of any project, building or other undertaking financed in whole or in part by Commonwealth funds which may affect the preservation and development of a district, site or building listed on or eligible for the Pennsylvania Register of Historic Places.”

PennDOT has signed a Memorandum of Understanding (MOU) with the PHMC for review of projects under the State History Code, executed on October 12, 2011 (*Appendix 2*). The review process in the MOU is similar to that in the Section 106 PA.

B. HANDBOOK APPLICABILITY

1. Federal-Aid Projects

The guidance in this handbook applies to all FHWA Federal-aid projects, including Federal-State and Federal-Local projects for which PennDOT is responsible for approving or reviewing a NEPA document. Federal-aid projects must comply with Section 106 and the State History Code; however, by following the Section 106 guidance, requirements under the State History Code will be met.

2. FHWA Transportation Enhancement (TE) Projects

The guidance in this handbook applies to all FHWA TE projects. The guidance in this document supersedes, and hereby eliminates, the 1996 Transportation Enhancement Projects Programmatic Agreement for Historic Resources among FHWA, PennDOT, PHMC, and the ACHP. As federally funded projects, enhancement projects are subject to the provisions of Section 106.

3. State Funded Projects

The guidance in this handbook applies to all state funded transportation projects. State funded projects requiring no federal permit follow only the requirements of the State History Code and not the requirements of Section 106. Certain procedures will not be followed for projects that are only reviewed in accordance with requirements of the State History Code. Those differences will be highlighted throughout this document.

The guidance in this handbook applies to any maintenance projects that have the potential to affect historic properties. Maintenance projects are normally state-funded efforts not subject to the provisions of Section 106. Because maintenance projects often do not have the potential to affect historic properties, most of these activities are exempt from review and documentation.

The District Maintenance Manager, Bridge Engineer or Project Manager must contact the District Environmental Manger when undertaking any of the following activities with PennDOT maintenance forces:

- a) Replacement, rehabilitation, or maintenance/preservation of bridges that are over 50 years old, unless the structure is not eligible, based on the current Historic Bridge Inventory nor contributes to a historic district.
- b) Maintenance activities that could affect stone retaining walls, old tree rows, or building ruins including foundations or other features.

This handbook also applies to state-funded projects requiring a permit from the U.S. Army Corps of Engineers (USACE). In this case, the provisions of Section 106, as well as the State History Code, are followed. See *Chapter XI* for further information on USACE permitted, state-funded, projects.

4. Highway Occupancy Permits

Highway occupancy permits (HOPs) are also subject to review under the State History Code. Because of the high volume of HOPs issued by PennDOT and the low potential to affect historic properties in most cases, the PHMC has agreed to limit their review to the following:

- a) When the permitted work will include construction of an auxiliary lane or other widening of the improved area, or if additional right-of-way will be required.
- b) 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, or if a historic building, structure, or district will be affected.

The applicant is responsible for submitting information to PHMC for their review.

II. ROLES AND RESPONSIBILITIES

A. FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Under Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, and its implementing regulations, 36 CFR 800, the FHWA is responsible for consultation with the Pennsylvania Historical and Museum Commission (PHMC), federally recognized Tribes/Nations, and other parties including the Advisory Council on Historic Preservation (ACHP). The FHWA is responsible for making findings and determinations, including determining the Area of Potential Effect (APE), and making determinations of eligibility and effect. The FHWA is also responsible for resolving adverse effects.

In keeping with both the NHPA and the National Environmental Policy Act of 1969 (NEPA), the FHWA is responsible for ensuring that decisions regarding historic properties are made with appropriate input from consulting parties and the public. Generally, the FHWA is the Lead Agency on Federal-Aid Projects.

B. US ARMY CORPS OF ENGINEERS (USACE)

The USACE is the lead federal agency under Section 106 for projects which are 100% state funded, and require a USACE individual permit. The USACE currently follows USACE procedures (33 CFR 325, Appendix C) for implementation of Section 106, which may differ from the ACHP regulations, primarily in the distinction between the APE (as defined by the ACHP regulations) and the permit area (as defined by the USACE). Projects which are 100% state funded but require a USACE individual permit will follow USACE procedures. In general, the procedures outlined for processing Section 106 projects with the FHWA as the lead federal agency are congruent with the USACE regulations. Both reference similar levels of effort, similar application of effects, and similar documentation. The paperwork processing procedures of this handbook will be followed for all Section 106 projects except that coordination would be with the USACE instead of the FHWA. For projects where the APE and the USACE permit area differ, the portion of the APE outside of the permit area falls under the requirements for state-funded projects under the State History Code as discussed in *Chapter I.B.3*, therefore the effects to historic properties must still be considered. Minor differences also exist with regard to project contacts and coordination between the three main USACE Districts: Philadelphia, Pittsburgh, and Baltimore. Differences in procedures will be highlighted throughout this document.

Information about 33 CFR 325, Appendix C can be found at:

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title33-vol3/pdf/CFR-2011-title33-vol3-part325.pdf>

Additional Guidance for 33 CFR 325 Appendix C is available at:

http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/techbio/InterimGuidance_25apr05.pdf

C. STATE HISTORIC PRESERVATION OFFICER (SHPO)

The regulations (36 CFR 800) prescribe a process for involving “consulting parties”. The SHPO is one such “consulting party”. The SHPO represents the interests of the State and its citizens in the preservation of their cultural heritage, and advises and assists federal agencies in carrying out their Section 106 responsibilities. In Pennsylvania the SHPO is the head of PHMC and, therefore, Section 106 and State History Code consultation occurs with the PHMC regardless of whether the project falls solely under the State History Code or also under Section 106. Notwithstanding the terms of the current Section 106 programmatic, the SHPO is traditionally consulted in:

- Determining and documenting a project’s APE,
- Efforts to solicit and identify consulting parties,
- Determinations of eligibility,
- Findings of effect, and
- Resolution of adverse effects.

For more information see 36 CFR 800.3(c)(1).

D. THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

Under the revised regulations 36 CFR 800, the role of the ACHP is more focused at the program level rather than in individual project review. When PHMC and FHWA agree on how to resolve adverse effects, the ACHP does not routinely review the finding and will not usually be a signatory to a Memorandum of Agreement (MOA). The ACHP may enter the Section 106 process when an undertaking has:

- Substantial impacts to historic properties
- Presents questions/situations which require interpretation of policy
- Could potentially present procedural problems
- Presents issues of concern to Indian tribes/nations or Native Hawaiian organizations, or
- At the request of a federal agency.

The ACHP will typically be a signatory to program (non project-specific) programmatic agreements. Information about the ACHP can be found through their website at www.achp.gov or 36 CFR 800.2(b).

E. THE KEEPER OF THE NATIONAL REGISTER OF HISTORIC PLACES (NRHP)

In addition to the ACHP, the National Register of Historic Places (NRHP) was established under the National Historic Preservation Act. The NRHP is the official list of the Nation's historic places worthy of preservation. It is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

Generally under Section 106 and its implementing regulations, eligibility of historic properties is determined through a consensual process between the agency official and the PHMC (36 CFR 800.4(c)(2)). No formal determination is made by the NRHP, nor are historic properties determined eligible for listing in the NRHP by this method actually listed.

On occasion, when no consensus can be reached by FHWA, PHMC, or Tribes/Nations, any party can request that the Keeper of the NRHP make a formal determination of eligibility, following 36 CFR 63.4. The Keeper also makes the formal determination of eligibility when an outside party nominates a historic property for listing in the NRHP, or if requested by FHWA or PHMC (even if consensus is reached between these agencies). That determination is binding for the historic resource.

As part of a mitigation plan, a historic property may be proposed for listing in the NRHP. The nomination form would be submitted through the PHMC for review and then to the PHMC National Register Review Board, prior to being sent to the National Register as a nomination.

F. INDIAN (NATIVE AMERICAN) TRIBES/NATIONS

Under 36 CFR 800.3(f)(2), federally recognized Indian (Native American) Tribes/Nations are a consulting party and must be consulted when they may attach religious and cultural significance to historic properties, on or off tribal land. The revised regulations require that Section 106 consultation is conducted in a sensitive manner respectful of tribal sovereignty. In addition, the government-to-government relationship between tribes/nations and the federal government must be recognized. Consultation is to take place throughout the process, especially while identifying resources. If properties of religious or cultural significance are identified, the Tribes/Nations are to be consulted in the significance evaluation as well as the determination of eligibility. Although the Tribes/Nations are consulted, the federal agency is still responsible to make the determination of eligibility. (The Tribes'/Nations' agreement on determinations is desirable but not required.) Should properties be identified as eligible for listing on the NRHP, the Tribes/Nations must be consulted in applying the Definition of Effect and Criteria of Adverse Effect. Tribes/Nations may also be invited to be concurring parties to a MOA or Programmatic Agreement (PA).

FHWA, in consultation with the National Park Service, PennDOT archaeologists, and PHMC, has determined that the Federally Recognized Tribes/Nations with historic ties to the Commonwealth of Pennsylvania are:

- Absentee-Shawnee Tribe of Oklahoma;
- Cayuga Nation;
- Delaware Nation;
- Delaware Tribe of Indians;
- Eastern Shawnee Tribe of Oklahoma;
- Oneida Indian Nation;
- Oneida Nation of Wisconsin;
- Onondaga Nation;
- Seneca Nation of Indians;
- Seneca-Cayuga Tribe of Oklahoma;
- St. Regis Mohawk Tribe;
- Shawnee Tribe;
- Stockbridge-Munsee Band of the Mohican Nation of Wisconsin;
- Tonawanda Seneca Nation; and,
- Tuscarora Nation.

All of these are comprised of multiple Tribes with different contact persons. PennDOT policy and information on the Tribes/Nations can be found in the *Tribal Consultation Handbook* (Publication 591) and the *Tribal Consultation Handbook Appendix* (Publication 592). The most current contact information can be found at <http://www.penndotcrm.org> under the Tribal Consultation tab.

Memoranda of Understanding have been signed with the following Tribes/Nations:

- Oneida Nation of Wisconsin;
- Seneca-Cayuga Tribe of Oklahoma;
- Shawnee Tribe; and
- Stockbridge-Munsee Band of the Mohican Nation of Wisconsin.

These Memoranda formalize consultation protocols described in the *Tribal Consultation Handbook* (Publication 591). The executed Memoranda are found at the PennDOT Cultural Resources web page at <http://www.penndotcrm.org>, under the Tribal Consultation tab.

NOTE: Consultation with Tribes/Nations other than those listed above, or other parties claiming Indian descent must be done on a case-by-case basis. Initial contacts with federally recognized Tribes/Nations should be made through FHWA. Other parties claiming Indian descent, but not federally recognized may still participate in consultation, but would not share the same status as a federally recognized Tribe. These parties would need to request to be a consulting party on a project-by-project basis, and would be equivalent to other consulting parties described under 36 CFR 800.2(c)(5) (*Section F* below). Generally, the PennDOT District archaeologist will coordinate consultation with Tribes/Nations and notify FHWA, where appropriate.

G. ADDITIONAL CONSULTING PARTIES

In accordance with 36 CFR 800.2(c)(6), representatives of a local government with jurisdiction over the area in which the project occurs are entitled to be a consulting party. Certain individuals and organizations with a demonstrated interest in a project may also participate as consulting parties, due to their legal or economic relationship to the undertaking or affected property. Consulting parties are involved throughout the Section 106 process and may be invited to concur with a MOA or PA. Requests to be a consulting party must be in writing to PennDOT, who will make the final decision (in consultation with PHMC) in granting consulting party status.

NOTE: While the term “Consulting Party” is only found in the ACHP regulations, for the sake of consistency the term may be employed in projects subject only to the State History Code.

PennDOT may seek FHWA involvement to resolve disagreements with the consulting parties. If a consulting party has been invited to concur in a MOA and refuses, their refusal will not invalidate the MOA (36 CFR 800.6(c)(3)).

H. THE PUBLIC

The opportunity for public involvement is provided throughout the Section 106 process (36 CFR 800.3 (e)) and the PennDOT project development process (see the *Public Involvement Handbook* - Publication 295). For more minor projects, public involvement is frequently sought through the NEPA public involvement process. Although a member of the public may raise questions or concerns at any time, public input will be specifically solicited and considered in making Section 106 decisions at specific points in the process. While PennDOT strives to avoid effects to historic properties and satisfy public concerns whenever feasible, the Section 106 process may be completed without agreement from the public on historic preservation issues. The FHWA (or the USACE, as appropriate) may seek the ACHP’s involvement to resolve disagreements with the public. Consultation with the public is described in *Chapter VI*.

I. PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PENNDOT)

Under Section 106, the Pennsylvania Department of Transportation (PennDOT) is the applicant and, as such, is entitled to participate as a consulting party. Although the FHWA (or the USACE, as appropriate) is ultimately responsible for determinations of the APE, eligibility, and effect for projects subject to Section 106, PennDOT has been delegated the role of implementing Section 106 through a programmatic agreement. PennDOT initiates consultation with PHMC and other consulting parties (36 CFR 800.2(c)(5)). PennDOT conducts the necessary investigations and makes determinations on behalf of the FHWA or the USACE; findings and determinations made pursuant to Section 106 are ultimately subject to federal agency review and approval.

Within PennDOT, the Districts have the primary quality control responsibility to ensure that individual projects follow the applicable laws and regulations. Districts are responsible for ensuring that all cultural resource documentation that is developed in the Section 106 or State History Code process meets applicable guidelines, is appropriate for each aspect of the process, and moves the process forward.

1. Cultural Resources Unit

The Bureau of Project Delivery, Highway Design Division, Environmental Policy and Development Section, Cultural Resources Unit has the primary quality assurance responsibility to ensure that PennDOT's program complies with applicable laws and regulations. To that end, the Cultural Resources Unit has the responsibility for establishing overall PennDOT guidance and procedures, providing training to the Districts' Environmental Units and to the District Cultural Resource Professionals (CRPs), assisting the Districts in complex or controversial projects, and participating in, and performing process reviews. The Cultural Resources Unit has the responsibility for providing the Districts with District CRPs who meet the qualifications under 36 CFR 61. The Cultural Resources Unit also has the responsibility of monitoring the overall performance of PennDOT's program and identifying and implementing measures that streamline the overall process without sacrificing quality.

2. District Cultural Resource Teams

Each Engineering District shall have assigned a professionally qualified cultural resource team, consisting of an archaeologist and an Architectural Historian. These District Cultural Resource Professionals (CRPs) (also referred to as District Archaeologist or District Architectural Historian) shall assist the District Environmental Manager and the Project Manager in PennDOT's compliance with Section 106 and the State History Code. Responsibilities of the CRPs may include, but are not limited to:

- a) Participation in Scoping Field Views;
- b) Preparing scopes of work and work plans;
- c) Documenting a project's APE;
- d) Reviewing consultant technical and price proposals;
- e) Conducting field meetings with cultural resource consultants during fieldwork, and providing guidance;
- f) Reviewing cultural resource reports and management summaries and providing comments;
- g) Making recommendations of eligibility and effect that can be based on consultant recommendations;
- h) Coordinating with PHMC and FHWA;

- i) Reviewing Categorical Exclusion Evaluations (CEEs), Environmental Assessments (EAs), Environmental Impact Statements (EISs) and Section 4(f) Evaluations.

The assigned District CRP(s) must be invited to any meeting at which PHMC will be present. In most cases, the District CRP will be setting up meetings with PHMC. It is the responsibility of the Project Manager, or the Environmental Manager (where applicable), to ensure that the District CRP has adequate notice to schedule and/or attend meetings with PHMC.

3. Consultants

Consultants are used in two different roles at PennDOT – as contracted environmental specialists that conduct historic preservation studies which are then reviewed by PennDOT staff, or, as an extension of that PennDOT staff in the management of the Cultural Resources Program. In the latter, consultants are part of a District cultural resource team.

Because of the size of the cultural resources program in PennDOT, many projects involve the assistance of consultants. Consultants typically conduct research for PennDOT, evaluate properties for eligibility to the NRHP and/or apply the Definition of Effect and Criteria of Adverse Effect to properties. Consultants work on behalf of PennDOT, FHWA, and/or the USACE; however, conclusions are stated as recommendations in prepared reports, not as determinations or findings as this has not been delegated to consultants. The District CRPs, as the FHWA/USACE designee, will consider the consultant's recommendations regarding eligibility and effect. If the District CRP agrees with the consultant's recommendation, and the federal agency agrees, their recommendation will be presented to PHMC as a determination. If the District CRP disagrees with the consultant's recommendation, he/she may ask the consultant to reconsider the recommendation, or conduct further research to further support an opinion, but may not require the consultant to change a professional opinion. In this case, the document will be submitted to PHMC with PennDOT's differing determination clearly stated in the cover letter. Consultants generally do not directly coordinate with PHMC or other agencies unless requested by the District CRP, or in certain circumstances, the District Environmental Manager or the Project Manager. Consultants that provide this type of environmental study are generally retained under project-specific preliminary engineering contracts, or, more rarely as part of an environmental studies open end contract.

Under Stipulations III.D.2 through III.D.4 of the Section 106 Programmatic Agreement (PA) (*Appendix I*), consultants may be used as an extension of PennDOT's cultural resources staff. In this role, consultants manage the Section 106 process, review environmental studies, and coordinate Section 106 with PHMC, FHWA, and other consulting parties and the public. Their role is the same as that of the District CRP. Under the Section 106 PA, there are restrictions on the long-term use of consultants as extension of staff. First, consultants used as CRPs must have completed the training specified in Appendix B of the Programmatic Agreement (see also *Chapter XV* on Quality Assurance and Quality Control). Simply meeting the Secretary of Interior Standards does not qualify a consultant to serve in the CRP role.

Secondly, a consultant serving as a CRP can only do so in a temporary capacity, defined in the Programmatic Agreement as no more than two years in a specific position, such as through a vacancy. The two-year period allows PennDOT time to post and advertise a vacancy, hire an

individual, and train that individual to assume CRP responsibilities. The two-year period also enables PennDOT to address short-term fluctuations in work load without hiring permanent staff. A consultant CRP may serve longer than two years by covering different positions as a sequence of assignment. For example, a CRP could serve 18 months in District 7, followed by 18 months in District 13. However, it is expected that a position will be filled in two years or less and that a series of consultant CRPs would not be providing that function over a long period of time.

Under the Adverse Interest Act, when a consultant serves as a CRP, that consultant's firm may not conduct work called for by the consultant CRP. If a consultant CRP calls for archaeological studies, that consultant's firm may not conduct that work; likewise, if a consultant CRP calls for architectural history studies, that consultant's firm may not conduct that work. The project manager is responsible for ensuring that consultant CRPs either do not scope work for which their firm is already under contract for design activities, or that if they do provide cultural resources recommendations, their firm is not involved in conducting the studies.

Finally, no more than 25 percent of the program may be staffed by consultants at any one time. For a current staff of 16 professionals, no more than four positions can be filled full time by consultant CRPs at any one time. If, through no fault of PennDOT, there are a number of vacancies that PennDOT has been unable to fill in time to avoid this trigger (of 25%), then signatories to the Programmatic Agreement must meet to determine if corrective action is warranted and what that action might be. It will be up to the signatories to determine whether PennDOT and the Commonwealth have been acting in good faith with regard to permanent staffing.

While non-PennDOT employees and consultant employees could be assigned to function as a District CRP, no employee whose firm or employer has responsibilities for conducting cultural resource studies for a project may serve as a designated District CRP for that project.

J. PRESERVATION PENNSYLVANIA

PennDOT has initiated a partnership with Preservation Pennsylvania to assist PennDOT in reaching out to the public to conduct Section 106 consultation. In effect, Preservation Pennsylvania serves as a clearinghouse for public involvement.

In order to comply with NEPA and Section 106 of the NHPA, FHWA, through its agent PennDOT, must afford the public and consulting parties the opportunity to consult and comment on the effects PennDOT projects have on historic and archaeological resources. Because both NEPA and Section 106 are process driven, rather than approval driven, there are several decision points during the consultation process when the public is given the opportunity to comment.

The partnership is operationalized through Project PATH, which has two basic functions and corresponding web addresses. First, Project PATH provides project-specific Section 106 information in a searchable database (<http://search.paprojectpath.org/>).

Project PATH projects side has the following purposes:

1. Contains publicly-available, basic Section 106 information regarding all active projects, including where consultation is in the NEPA and Section 106 process.
2. Serves as an automated notification system to interested and consulting parties through generated e-mails.
3. Permits interested parties to sign up for automated notifications of project activities and allows CRPs to directly solicit interested parties that have signed up for involvement with new projects.

The second function of Project PATH is to serve as a resource and knowledge center on navigating the Section 106 process (<http://www.paprojectpath.org/>). On this page, Project PATH provides news of PennDOT preservation activities, a blog, roles and responsibilities, information about the Section 106 process, public involvement, a glossary, and instructional videos.

In order to improve the quality of public response and involvement, Preservation Pennsylvania conducts cultural resource and Section 106 training for the public and preservation groups as potential consulting parties, so that the public can understand its role in consultation under NEPA and Section 106. In addition, Preservation Pennsylvania serves as a non-PennDOT intermediary to the public and preservation groups as consulting parties in answering questions regarding the NEPA and Section 106 process.

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III. EARLY COORDINATION

A. SCOPING

The scoping field view is an opportunity to initiate the Section 106/State History Code process at an early stage in the transportation project development process. Early identification of known or potential historic properties and early determination of the need for cultural resource studies allows project engineers/designers to avoid/minimize impacts and to plan project schedules that are more predictable. Scoping for cultural resources should be coordinated with the scoping field view for other environmental and engineering issues.

The scoping field view is usually the first opportunity for the District Cultural Resource Professionals (CRPs) in archaeology and architectural history to consider the presence of, and potential effects to, historic properties. Due to potential scheduling conflicts and the need to conduct background research prior to the scoping field view, **the cultural resource team must be given at least two weeks notice prior to a scoping field view.** When circumstances prevent the District CRPs from attending the scoping field view, it is the responsibility of the Project Manager or Environmental Manager to schedule a separate cultural resources field view, if necessary. The preference is for the CRP to attend the scoping field view whenever possible, even when complete project information is not known. An additional follow-up field view may be necessary.

The following actions prior to, during, and following the scoping field view will enable the CRPs to make informed and timely recommendations, and will provide documentation of their recommendations to the Project Manager and Environmental Manager:

1. Prior to the scoping field view, the Project Manager or Environmental Manager should provide a USGS map location and brief project description, as well as any plans that may be available, to the CRPs.
2. The CRPs will identify known and mapped archaeological and historic properties within and adjacent to the project area, using the Cultural Resources Geographic Information System (CRGIS). The Pennsylvania Historical and Museum Commission's (PHMC) on-line list of properties on the National Register of Historic Places (NRHP) will be checked to determine whether any NRHP-listed properties exist within the area of the proposed project.
3. The District Architectural Historian will also search the CRGIS for un-mapped historic properties within the project region's municipalities. The District Architectural Historian may need to conduct further research to gather information (including the review of photographs), or have that research conducted on their behalf, in order to identify the location of these resources within the study region.
4. The CRPs will check historic maps, soil maps, "As-Built" plans, or other mapping in the District office, and other pertinent information such as historical aerial photographs.

5. The CRPs will attend a scoping field view. The goal of the scoping field view is for the CRPs to define the area of potential effect (APE) based on the project information provided by the Project Manager or Environmental Manager; identify known and potential historic properties; determine potential for archaeological sites; and make recommendations on whether additional cultural resource studies are necessary. In addition, the scoping field view is an opportunity for the Project Manager and Environmental Manager to consider and discuss all potential environmental impacts, including impacts to historic properties that may occur on a project and to reconfigure the project to avoid or minimize these impacts. It is important to note that the degree to which a decision can be made in the field will be determined by whether the CRPs were able to complete the background research prior to the field view and by the quality of the information provided by the Project Manager or Environmental Manager. Incomplete information or project plans that are vague or uncertain may not allow the CRPs to adequately define the APE or make recommendations until the plans are more fully developed.

6. After the scoping field view, the CRPs will take one of the following courses of action:

- Recommend a project as exempt under *Chapter IV.C*, or *Chapter IV.D* as appropriate; and,

Record the exemption in the CE Expert System, either on Page B:A-4 of the CEE/ED form, or in the Bridge and Roadway Programmatic Agreement Applicability Matrix.

On a daily basis, exemptions from the CE Expert System are populated in the Project PATH system, so that the public would see an exemption within 24 hours if it is input into the CE Expert System; or,

- Complete the [Project Early Notification/Scoping Results Form](#) that discusses the presence of known and/or potentially eligible cultural resources; whether additional studies are needed to identify historic or archaeological resources; or whether additional project information is required to make a determination concerning the need for cultural resource studies. The CRPs should indicate the anticipated level of public involvement, based on the project and its potential effects. Information found in the *Project Early Notification/Scoping Results Form* will be made available to the PHMC, consulting parties, and the public through Project PATH.

In addition to the information that will be shared with PHMC and the public, the CRP may also prepare a separate internal memo that adds scoping narrative which, while relevant to the project, may be of little interest or value to the consulting party community or PHMC. When possible, an estimated timeframe for completing the process should be included. A copy of the memo/email should be provided to the District Environmental Manager or Project Manager, which will become part of the project file. The Environmental Manager and/or Project Manager may also ask the CRPs to develop a consultant scope of work. At the discretion of the Project Manager and/or Environmental Manager, the CRP may be asked to work directly with the cultural resources consultant(s) for the project on the studies to be undertaken and as questions/issues arise during the development of the studies.

The Early Notification/Scoping Results Form will be posted in Project PATH. In particular, where there are likely going to be effects to historic properties, this interim step is necessary to allow for sufficient time for solicitation of potential consulting parties; or,

- Make a combined early notification and project finding using the [*Above Ground Historic Properties Field Assessment and Finding Form*](#) **and** the [*Archaeology Field Assessment and Finding Form*](#). The combined early notification and finding may only be used when both above ground and archaeology findings can be made without the need for further studies and where there is sufficient project information to make the finding following the field view.

The combined finding would be posted in Project PATH. Making a combined finding as the initial Section 106 step in Project PATH is limited to projects where there is not going to be any effect to historic properties. When there is going to be no resource or no effect, PennDOT is not required to solicit for consulting parties, nor is required to allow the public a comment period.

NOTE: The CRPs should be careful in preparing the *Project Early Notification/Scoping Results Form*. Particularly sensitive material, which should not be revealed to the public, such as the location of archaeological sites, should not be included in the form.

1. PHMC Project Notification

The PHMC should be notified of non-exempt projects early in the project development process. The initial notification to PHMC will vary according to the type of project and the anticipated nature of effect. For projects exempt under Appendix C of the Section 106 PA (***Chapter IV and Appendix I***), early notification to PHMC is not required.

For projects that are not anticipated to have effects (but are not exempt under Appendix C of the Section 106 PA) early notification to PHMC is not required, but the CRP is required to post a *Project Early Notification/Scoping Results Form* or to post a combined early notification and finding using the *Above Ground Historic Properties Field Assessment and Finding Form* **and** the *Archaeology Field Assessment and Finding Form* (see ***Section A.6.d*** above). Notification of the Section 106 Finding will be provided to PHMC prior to NEPA approval (see ***Chapter VIII***) by posting and notification through Project PATH.

For projects that may have an effect, the CRP should request an ER number when submitting the *Project Early Notification/Scoping Results Form* by checking the box on the form that an ER is needed. A USGS map must be attached to the *Project Early Notification/Scoping Results Form*. For EA and EIS projects, PHMC may be initially notified of the project through an Agency Coordination Meeting (ACM), but more typically through Project PATH.

NOTE: Since the presence and potential effects to archaeological sites is generally not known at the scoping stage, it is recommended that an ER number be requested if a Phase I Archaeology Identification survey will be needed.

2. Notification to the Public

When projects are exempted from further Section 106 consideration, the individual exemptions are posted in Project PATH within 24 hours of the notation in the CE Expert System. Project PATH also has a reporting feature that allows the public to generate a list of exemptions by Engineering District or by selected time period (exceeding the required quarterly reporting described in the Section 106 PA, under Stipulation III.A.2). Particularly for bridge replacement projects that are exempted under Appendix C by CRPs, as a risk-management approach, the NEPA document should not be approved sooner than two weeks after the exemption has been posted, to allow the possibility for the public to comment if there are any cultural resource issues.

For projects where a *Project Early Notification and Scoping Results Form* is prepared, Preservation PA will post the finding in Project PATH and solicit potential consulting parties through e-mail notifications.

3. The National Park Service (NPS)

The NPS should be notified of projects early in the project development process where the project has the potential to affect a National Historic Landmark (NHL). 36 CFR 800.10(c) requires that federal agencies involving a National Historic Landmark notify the Secretary of the Interior of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there might be an adverse effect. Under existing delegations of authority, the National Park Service acts on behalf of the Secretary in such situations.

In Pennsylvania consultations involving either an NHL or potential for effects to a National Park will involve the NPS's Northeast Regional Office in Philadelphia. The NPS, must be consulted when a project has the potential to affect a NHL. The NPS should be contacted via e-mail at nps_nhl_nereview@nps.gov or through Project PATH by either selecting the individual contact Bonnie Halda or the entity National Park Service NHL. Although the NPS owns or controls property other than National Historic Landmarks, they have requested to be notified only about projects that may affect NHLs.

4. Tribes/Nations Project Notification

Federally Recognized Tribes/Nations with ancestral ties to Pennsylvania should be notified of projects early in the project development process, usually after the scoping or cultural resources field view. Generally, the Tribes/Nations are interested in projects where there will be ground-disturbing activities in previously undisturbed areas. The District Archaeologist will determine which projects require tribal notification and which Tribes/Nations need to be notified. The District Archaeologist will contact the Tribes/Nations using the *Project Initial Tribal Notification Form*. Tribal consultation is discussed in more detail in *Chapter V* and in PennDOT's *Tribal Consultation Handbook* (Publication 591).

5. Transportation Enhancements Projects

The current interagency funding Memorandum of Understanding between PHMC and PennDOT provides PHMC with funding from the FHWA to assist in expediting review of projects. The agreement includes an emphasis on providing assistance to the project sponsor in Section 106

compliance for Transportation Enhancement (TE) projects. PHMC dedicates one staff member to assisting with expediting TE projects by developing historic contexts, identifying and evaluating historic properties associated with TE projects and reviewing PennDOT determinations of effect. This PHMC TE coordinator also attends scoping field views to help develop levels of effort for identification and evaluation. The PHMC TE coordinator:

- Is a single point of Contact for TE projects
 - Assists sponsors with application development and submission
 - Assists sponsors/PennDOT in identifying and evaluating historic properties
 - Assists sponsors/PennDOT in minimizing effects with the goal of a No Adverse Effect finding due to sympathetic design

B. AREA OF POTENTIAL EFFECT (APE)

The Area of Potential Effect (APE) is defined as the “geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist” (36 CFR 800.16(d)).

One of the goals of early project scoping is to establish the APE; the area within which the project may have effects on historic properties. The APE must be defined, mapped, described, and justified. Justification is an explanation of how the APE was selected (including the reasoning why specific areas were excluded).

It is the responsibility of the Project Manager or Environmental Manager to provide accurate and timely information on the nature and extent of the project to the CRPs so that the APE can be properly defined. In order to achieve this goal, the project must be advanced in design to the point that most reasonable options are considered, but early enough in the process to allow reasonable time to schedule necessary cultural resource studies and to best allow for avoidance and/or minimization of effects to properties which are eligible for, or listed on, the NRHP. As the scope changes during the project, it may be necessary to redefine the APE for either archaeological properties or historic properties.

While the term ‘APE’ is utilized in the ACHP regulations implementing Section 106, not the State History Code, for the sake of consistency and operational simplicity the term is employed and an APE is defined regardless of whether or not the project is subject to Section 106 or just the State History Code. Finally, the U.S. Army Corps of Engineers (USACE) does not equate the APE with permit area. (See *Chapter XI* for more information.) PennDOT will divide out the permit area from the broader APE for purposes of coordination under the State History Code.

NOTE: For Design-Build projects, the CRPs need to make a best estimate of the APE and the potential for cultural resources, so that the Design-Build Team can be aware of any sensitive areas. Since a contractor's approach to a project is not always known, it is recommended that the Design-Build Team coordinate with the CRPs prior to construction, particularly if the project vicinity is sensitive for archaeological sites. Coordination with the CRPs will allow the contractor to take advantage of different tools and techniques to avoid or protect archaeological resources.

1. APE for Above Ground Historic Properties

The Project APE is typically equivalent to the APE for above-ground historic properties. When establishing an APE for historic properties multiple factors must be considered including, but not limited to, potential physical, visual, and auditory impacts. The APE should also include all areas used for staging and temporary construction. Although areas used for staging and temporary construction may not be known at the time of scoping, these will need to be considered as the project develops. The purpose in setting an APE is to define the area in which an historic property survey will be conducted; however, it must be set in relation to the project, not in relation to the resources that are, or may be, present. The presence or absence of buildings in the view-shed does not always mean that there are no historic properties in the APE. For example, land associated with a farm whose buildings are outside the view-shed of the project may still be within the APE. In this case, it may be necessary to assess the eligibility of the entire farm to determine effects. When assessing an APE it is important to consider both the view from the project looking outward as well as the view looking toward the project area. It is also important to consider views in different seasons where degree of tree and leaf cover can make a difference in potential effects. Therefore, it is usually necessary to set an APE in the field.

Each case can be highly individual. When describing the APE, effort should be made to describe the area in terms of dimension-usually in terms of compass directions (north, south, east, and west). Physical barriers, such as tree lines or crests of hills, may also be appropriate to describe the boundaries of the APE. Where it is difficult to describe the APE in words, hand-drawn sketches or marked maps of a suitable scale may substitute.

2. APE for Archaeological Properties

The APE for archaeological properties is usually a subset of the APE for above-ground historic properties. The APE for archaeological properties has both a horizontal and a vertical dimension and is defined as any part of the project area in which ground disturbance may occur, or where the integrity of archaeological sites may be diminished. In establishing the vertical APE, a buffer area should be included between the proposed depth of physical disturbance and any soils with potential for archaeological resources. The APE includes the footprint of the new construction and any temporary construction easements. Although areas used for staging and temporary construction may not be known at the time of scoping, these will need to be considered as the project develops. In defining the APE for archaeology, consideration should be given to delineating an APE that is large enough to accommodate any reasonably foreseeable design changes, balanced against the costs of potentially testing too large of an area. Areas previously disturbed should be included in the APE if they are to be disturbed again by the project.

Equipment staging areas are also part of the APE, however, the selection of staging areas is usually done by the construction contractor who is responsible for consultation with PHMC. When the CRP identifies archaeologically sensitive areas adjacent to the project, the CRP should inform the Project Manager or Environmental Manager. The CRP should work with the Project Manager in preparing contract clauses that require the contractor to avoid these areas. These sensitive areas should also be noted in the Environmental Commitments and Mitigation Tracking System (ECMTS).

Surface activities, such as paving, may or may not affect deeply buried sites. Factors that need to be considered for projects that have limited vertical disturbance include: depth of disturbance from the activity; disturbance from previous land use; degree of alteration of existing surface features; permanence of the project; and reversibility. Establishing the APE for projects limited to surface activities and potential for deeply buried sites should be coordinated with the Bureau of Project Delivery Cultural Resources Unit and FHWA.

Per FHWA policy, borrow and waste areas are not part of the APE unless these areas have been designated by PennDOT.

3. APE Documentation

Documentation of the APE shall include:

- A 7.5 minute USGS Topographic Map that includes the name of the Quadrangle and a delineation of the APE.
- A design map or other map of appropriate scale with the APE clearly illustrated, particularly when the size of the project relative to the scale of the USGS map does not allow a clear delineation of the APE on the USGS map. When submitting a design map or other type of mapping, the USGS map must also accompany the submission.
- A project description and a verbal description and justification of the APE.

4. Consultation with the PHMC on the APE

Under the terms of the Section 106 Programmatic Agreement (PA), certain projects are exempt from review by PHMC (see *Chapter IV* and Appendix C of the Section 106 PA), and therefore documentation of the APE does not need to be submitted to PHMC.

For projects not exempt from review under Appendix C of the Section 106 PA, the requirement to consult with PHMC on the APE and the timing of that consultation will depend on the National Environmental Policy Act (NEPA) environmental document and a project's potential effect. For projects requiring an Environmental Impact Statement (EIS) under NEPA, documentation of the APE must be submitted to PHMC and comments must be solicited. For projects where a Categorical Exclusion (CE) or an Environmental Assessment (EA) under NEPA will be prepared, consultation with PHMC on the APE is only required for certain no adverse effect findings and for all findings of adverse effects. Documentation of the APE is more likely combined with a determination of eligibility and/or effect for CEs and EAs (see *Chapters VII and VIII*). The timing of the posting or submission of the APE documentation to PHMC is flexible and will vary according to the path the project will follow through the Section 106 process. The decision on when to submit the APE documentation should take into account the

potential for streamlined actions versus the possibility that a change in APE due to PHMC comments might require additional field surveys.

Submission of the APE documentation to PHMC will be by one of the following means:

a. Separate Submission

This APE documentation submission might follow the scoping or cultural resource field view, or may be submitted after more details of the project become known. The CRP will likely choose this option if they deem it important to have early agreement with PHMC on the APE and they are anticipating Section 106/State History Code coordination with PHMC in separate steps instead of through use of the *Above Ground Historic Properties Field Assessment Finding Form (SFF)* and/or the *Archaeology Field Assessment Finding Form (AFF)*.

For projects requiring the preparation of an EIS the CRP is required to consult with PHMC early in project development prior to a determination of eligibility or effect. Therefore, a separate submission on the APE may be appropriate for EIS projects. If a Windshield Survey and/or Historic Context Report, Archaeological Sensitivity Report, and/or Predictive Model Report is/are prepared, the APE can be included in the report.

b. Within an Identification and Evaluation Report

For non-exempt CE or EA level projects the APE may be included with an Above Ground Historic Properties Survey and Identification Report (also called a Determination of Eligibility Report or Above Ground Historic Properties Identification and Evaluation Report) and/or Archaeological Identification and Evaluation Report.

c. Within an *Above Ground Historic Properties Field Assessment Finding Form (SFF)* and/or *Archaeology Field Assessment Finding Form (AFF)*

For projects that cannot be exempted by the District Designee or CRP, but that do not require consultation with PHMC the APE can be documented as part of the SFF and/or AFF. See *Chapter VII* for further information on the use of the SFF and/or AFF.

5. PHMC Concurrence on the APE

If PHMC has not objected to, or commented on, the recommended APE within 30 days¹ of receipt, PennDOT shall presume concurrence on the APE, and proceed to the identification stage of the process, consistent with 36 CFR 800.4(b). If PHMC objects to the APE, the District Archaeologist or Architectural Historian will consult with PHMC, preferably at a field meeting, to resolve the objection. For federally funded projects where resolution cannot be achieved, the lead federal agency will be consulted and will make the final determination.

¹ The 30-day review period shall be superseded by the terms of the current *FHWA/PennDOT Interagency Funding Agreement*. Contact the Bureau of Project Delivery Cultural Resources Unit for the most current version of this agreement.

C. EARLY COORDINATION IN PLANNING

1. Project Notifications During Planning

PennDOT updated the project development process to better link planning and NEPA, to allow the consideration of environmental issues earlier in the planning process, so that projects can be programmed with more accurate cost estimates and project schedules. (See *Design Manual 1A* (Publication 10B).)

2. Tribal Notification During Planning

The *Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) resulted in new regulations identifying a need for more input from various agencies and groups into the creation of the Transportation Improvement Plan (TIP). Metropolitan Planning Organizations and Rural Planning Organizations (MPO/RPO) must consult with State, Local and Tribal Governments to address concerns the governments have over land which falls under their jurisdiction within the state boundaries.

These regulations do not fully apply to Indian Tribes and Nations in Pennsylvania because there are no tribal lands. Still, PennDOT and FHWA, Pennsylvania Division identified 15 federally recognized Tribes and Nations whose ancestors had at one time lived in the lands of Pennsylvania. These 15 Tribes and Nations are currently located in New York, Wisconsin, and Oklahoma.

There are a number of Presidential Executive Orders that address the special government to government relationship that agencies need to follow with regard to Tribal Governments (EO 13084 and EO 13175). Also, the United States has signed treaties with these Nations and Tribes. Many of these treaties have included the recognition that these Nations and Tribes are Sovereign Nations and should be shown that respect during consultation.

As a surrogate for FHWA, PennDOT routinely consults with these Tribes and Nations on a government to government basis. Under SAFETEA-LU, the Tribes and Nations can be considered “interested parties.” But in keeping with the government to government relationship that PennDOT and FHWA have established with the 15 Federally Recognized Tribes and Nations that we consult with, PennDOT believes consultation with Tribes and Nations should be at a higher level than just an “interested party.”

As part of the process in creating the TIP, MPOs and RPOs have a responsibility to consult with these Federally Recognized Tribes that have an interest in their designated areas. The consultation should be on the same level that would be granted other governmental agencies. Each MPO or RPO should send information relevant to the proposed TIP to interested Tribes in advance of any public meetings and solicit the views of the Tribes before finalizing the TIP. Tribes should have at least 30 days to review draft TIP information.

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IV. DETERMINING IF PROJECTS ARE EXEMPT FROM FURTHER SECTION 106 REVIEW

Under the Section 106 Programmatic Agreement (PA), certain projects may be exempted from further Section 106 review. 100% state-funded projects with a US Army Corps of Engineers (USACE) permit issued as a PASPGP-4, Category I or II, and, other state funded projects may follow the same process.

A. WHO CAN DETERMINE IF PROJECTS ARE EXEMPT FROM FURTHER SECTION 106 REVIEW?

PennDOT Cultural Resource Professionals (CRPs) or District Environmental staff with appropriate training, called District Designees (DD), may evaluate whether certain minor projects meet specific conditions that would exempt them from further Section 106 review. The intent of Stipulation III.A of the Section 106 PA is to allow District Designees to review minor projects that, by their nature, are anticipated to have no potential to affect historic properties, without consulting with the CRPs or the Pennsylvania Historical and Museum Commission (PHMC). At any time, if a District lacks trained DDs, or at the preference of a District, the CRPs can be asked to review and exempt these projects. Stipulation III.B of the Section 106 PA allows CRPs to exempt certain projects from further Section review, including select bridge replacement projects, subject to certain conditions. [Appendix C of the Section 106 PA](#) provides a list of projects and the conditions that must be met for projects to qualify for exemption by the DD or the CRP. The activities included are considered to have a low potential for effects to historic properties and will not result in any changes to the properties' significant characteristics. Only the activities specifically listed in Appendix C of the Section 106 PA may be exempted by the DD or CRP.

It should be noted that often a project may include more than a single activity. If some project activities meet the exemption requirements, but other activities do not, the project does not qualify, and the project may not be exempted. These projects must be reviewed by the PennDOT CRPs. The DD is also responsible for recognizing particular activities which, although they may meet the Section 106 PA conditions for exemption, should not be considered to qualify due to extenuating circumstances. An example of this would be a project where PennDOT owns a large right-of-way that may not have been previously disturbed, and may contain intact archaeological resources (See Stipulation III.A.1 of the Section 106 PA). The DD may consult with the CRP before exempting a project from further Section 106 review.

B. CONDITIONS FOR EXEMPTING PROJECTS FROM FURTHER SECTION 106 REVIEW

The projects listed in Appendix C of the Section 106 PA must meet all of the following conditions in order to be exempted from further Section 106 review:

1. The Undertaking is Classified as a Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA).

The project must be classified as a CE. Projects that would require an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) cannot be exempted from further review. In addition, the project would not qualify if it is segmented from an EA or EIS-level project.

2. The Undertaking is Limited to the Activities Specified in Appendix C of the Section 106 PA.

The project cannot contain activities other than those specified in Appendix C of the Section 106 PA.

3. The Undertaking is on an Existing Transportation Facility.

Construction of new facilities, such as a road on new location or a bridge on new alignment, cannot be exempted from further review.

4. The Undertaking is not Within or Adjacent to a National Historic Landmark or National Park, or Property Under the Jurisdiction of the National Park Service.

These projects require consultation with the National Park Service, who is not a signatory to the Section 106 PA. Therefore, these projects do not qualify for an exemption.

5. The Undertaking Has No Known Public Controversy Based on Historic Preservation Issues.

Any activities for which there is public controversy related to historic preservation issues cannot be exempted from further review. However, if the public controversy is not related to cultural resources, the project would qualify, and can still be reviewed by the District Designee. Implementation of public involvement procedures, as per PennDOT's *Public Involvement Handbook* (Publication 295) should be used to identify public controversy.

6. The Undertaking Requires No More Than 3.6 meters (12 feet) of New Right-of-Way on Each Side of the Road, Railbed, Existing Trail, or Pedestrian Facility.

Right-of-way refers to permanent right-of-way purchased in fee simple. Temporary construction areas are allowed under this exemption as long as protective geotextile and fill is used (see *Chapter X*).

C. PROJECTS EXEMPTED BY DISTRICT DESIGNEE OR CRP

Appendix C of the Section 106 PA contains a list of exempt activities. Please note that this list was revised in October 2010. An annotated list of exempt activities, with further explanation of each activity and the intent of the activity and limitations of the activity follows the activity list. In keeping with the intent of the Section 106 PA, exemptions made under Appendix C, Section A conclude the Section 106 process. Once the exemption is made, a NEPA document may be approved. Public involvement is carried out entirely under the NEPA process, as per 36 CFR 800.2.d.

A current list of activities that only the CRP can exempt, and the conditions under which they can be exempted, can be found in Appendix C of the Section 106 PA or in the CE Expert System. An annotated list of exempt activities, with further explanation of each activity and the intent of the activity and limitations of the activity follows the activity list.

D. DOCUMENTING EXEMPTIONS IN THE CE EXPERT SYSTEM

The DD or CRP is responsible for documenting the exemption in the CE Expert System either on Part B:A-4 of the CEE form, or in the Applicability Matrix for projects that qualify for the Bridge and Roadway Programmatic Agreement (BRPA), in the Cultural Resources section. The specific project designation(s) must be entered, using the nomenclature found in the Expert System:

Only the letter and number combination needs to be recorded, not the name of the exemption. In addition, the date the exemption was made, and the person who made the exemption must be entered. A reporting feature within the CE Expert System will allow any registered PennDOT Business Partner to create a report for a defined time period. Project PATH also has a reporting feature, available to the public, which creates a report of exemptions by District and by a defined time period. Historic bridge replacement exemptions made under Appendix C, Section 2.B are also included in this report. Exemptions posted on Project PATH are pulled from the CE Expert System as the exemptions are made and prior to the NEPA approval. This information is refreshed daily, which means that if the project changes in preliminary design such that the exemption(s) no longer apply or are different, this new information would re-populate the report.

Once the exemption is made, the Section 106 process is considered completed, and a NEPA document may be approved. However, if the SHPO or other signatory party to the Section 106 PA, or consulting party on the project objects to the exemption within 30 days, under Dispute Resolution Clause XI, PennDOT must consult to resolve the objection.

As a risk management decision, it is recommended that the NEPA document not be approved until 14 days after the exemption is made and the exemption is made public. This is a recommendation and not a requirement. In different parts of the state, 14 days may be unnecessary or may not be enough time to gauge public reaction. Project managers should ensure time in their schedules to allow for a potential comment period, depending on the nature of the project and likely interest.

Where commitments are made as part of the exemption, these must be recorded in the NEPA document. The CE Expert System provides an area in the Cultural Resources section for such commitments, and records that on the Mitigation Summary Page (Page B:E). Commitments must be incorporated into the project's design documents. In order to track and transfer commitments through the project development process, Environmental Commitments and Mitigation Tracking System (ECMTS) documentation should be prepared and submitted to the appropriate channels, including the Contract Management Unit, as the project moves through Final Design and Construction. Special care should be taken to ensure that avoidance, minimization, or mitigation measures included by the CRP for design-build projects are recorded in ECMTS so that they are relayed to the contractor and followed as the contractor completes the plans.

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V. TRIBAL CONSULTATION

A. GENERAL GUIDANCE

The 1992 amendments to the National Historic Preservation Act of 1966 (NHPA), and changes made in 1999, 2001, and 2004 to the implementing regulations (36 CFR 800) of Section 106 of that Act, obligate federal agencies to consult with Federally Recognized Native American Tribes/Nations. The Federal Highway Administration (FHWA) is required to make a reasonable and good faith effort to identify and consult with Federally Recognized Tribes/Nations that may attach religious and cultural significance to historic properties affected by FHWA-aid projects. Historic properties of importance to Tribes/Nations may be located on tribal lands or may be located on ancestral, aboriginal, or ceded lands. Pennsylvania has no current tribal lands but a total of 15 Federally Recognized Tribes/Nations have been identified that are likely to have an interest in Pennsylvania projects because of ancestral ties to the state.

Federal recognition is a key component of 36 CFR 800. Federally Recognized Tribes/Nations have special status as a consulting party under the regulations (as defined under 36 CFR 800.2(C)(2)) even when historic properties are located off tribal lands. Tribes/Nations that are not federally recognized may also participate in the Section 106 process; however, their status is equivalent to other interested parties. Non-Federally Recognized Tribes/Nations must have a demonstrated interest in a project and must send a written request to FHWA if they wish to be a consulting party. The use of the term Tribe/Nation throughout this guidance refers to a Federally Recognized Indian Tribe/Nation, as defined in 36 CFR 800, unless otherwise noted. A list of the 15 Federally Recognized Tribes/Nations that PennDOT routinely consults with can be found at <http://www.penndotcrm.org>, in *Chapter II.F* of this handbook, and in the *Tribal Consultation Handbook* (Publication 591) and *Tribal Consultation Handbook Appendix* (Publication 592).

Each Federally Recognized Tribe/Nation is a sovereign nation. Therefore, FHWA as part of the Federal government engages in government-to-government relations with the Tribes/Nations. These responsibilities are established by treaty and law and cannot be delegated. As has been demonstrated in other states, developing a good working relationship with Tribes/Nations takes time. FHWA and PennDOT have worked on specific protocols, or understandings, with each of the Tribes/Nations. These protocols and law are outlined in the *Tribal Consultation Handbook* (Publication 591) and the *Tribal Consultation Handbook Appendix* (Publication 592). Memoranda of Understandings (MOU) have also been signed with four of the 15 Federally Recognized Tribes/Nations, and more are in review. The signed MOUs are with the Oneida Nation of Wisconsin, the Seneca-Cayuga Tribe of Oklahoma, the Shawnee Tribe, and the Stockbridge-Munsee Band of the Mohican Nation of Wisconsin. Copies of the MOUs are on the PennDOT cultural resources website (<http://www.penndotcrm.org>). It is important to note that the foundation for these protocols and MOUs has been and needs to be trust and good communication, which cannot be forced or rushed.

The purpose of consultation with the Tribes/Nations is no different from consultation with the Pennsylvania Historical and Museum Commission (PHMC) 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/Nations, the Tribes/Nations bring a unique and added perspective to the consultation process. When Tribes/Nations are provided with a reasonable opportunity to provide advice on the identification and evaluation of such properties, when Tribes/Nations articulate views on the project's effects on such properties, and when Tribes/Nations participate in the resolution of adverse effects to such properties, the decisions and results will be better. Additional information on the 15 Federally Recognized Tribes/Nations with interest in Pennsylvania and on tribal consultation can be found in the *Tribal Consultation Handbook* (Publication 591) and *Tribal Consultation Handbook Appendix* (Publication 592). Current contact information for the 15 Tribes/Nations is available at <http://www.penndotcrm.org> on the Tribal Information Page.

NOTE: PHMC is the State Historic Preservation Office (SHPO) for Pennsylvania.

B. SPECIFIC GUIDANCE

PennDOT has been delegated certain activities on behalf of the FHWA and with the consent of the Tribes/Nations. PennDOT is responsible for initiating consultation with Tribes/Nations on a project specific basis, transmitting documentation and information to the Tribes/Nations, and determining a Tribe's/Nation's level of interest in a project.

While the Tribes/Nations have consented to coordinate with PennDOT, they may at any time choose to consult exclusively with FHWA. FHWA will also take the lead in consulting with Tribes/Nations when burials are found or other issues of a sensitive nature to the Tribes/Nations are identified.

Protocol for initiating consultation is all outlined in the *Tribal Consultation Handbook* (Publication 591) and the *Tribal Consultation Handbook Appendix* (Publication 592). The Handbook and Appendix provides specific criteria for each of the Tribes/Nations regarding when to initiate consultation with that individual Tribe/Nation.

1. What Information to Send to the Tribes/Nations

The District Archaeologist is responsible for transmitting information and documentation to the Tribes/Nations. Two forms have been developed to facilitate that coordination: a [PennDOT Project Initial Tribal Notification Form](#) and a [PennDOT Project Information Form](#). Updated versions of these forms have been developed for Project PATH. Use of these forms precludes the preparation of individual letters.

The *Project Initial Tribal Notification Form* is used to begin consultation and indicates the type of project and level of environmental documentation. A [Project Early Notification/Scoping Results Form](#) or similar documentation describing the project and a project location map should be attached to this form.

The *Project Information Form* is to be used for subsequent submissions to the Tribes/Nations, and indicates project status. Archaeology reports, summaries, or other relevant documentation should be attached.

Project PATH generates these tribal forms that contain the basic project information (e.g. County, SR/Section, type of project) and the names and addresses of tribal contacts. Notification by e-mail and Project PATH for those tribes that have adopted this system is available. For those tribes that prefer hard copies, Project PATH can generate a printable version of these forms. For those Tribes/Nations that have agreed to an all-electronic submittal, forms and documentation may be transmitted through Project PATH. It is the responsibility of PennDOT Bureau of Project Delivery and FHWA to consult with each Tribe/Nation over whether an all-electronic submission system is acceptable; however, it should be noted that electronic submissions do not alter PennDOT and FHWA responsibilities for conditions, content, or timing of consultation.

Copies of the *Project Initial Notification* and *Project Information Forms* are to be copied to the FHWA environmental review team member, and the PennDOT Bureau of Project Delivery Cultural Resources Unit. The PennDOT contact should be the District Archaeologist that covers the District in which the project is located.

Please note that consultants have not been authorized to consult with Tribes/Nations. At the discretion of the District Archaeologist, consultants may prepare project information and fill out the forms for submission to the Tribes/Nations. However, consultants may not contact Tribes/Nations directly or send any information on consultant letterhead. All information prepared by consultants for submission to the Tribes/Nations must be sent to the District Archaeologist, who will sign the forms and forward to the Tribes/Nations.

The *Tribal Consultation Handbook* (Publication 591) and the *Tribal Consultation Handbook Appendix* (Publication 592) has maps detailing the areas of interest for each Tribe/Nation, contact information for the Tribes/Nations, and names of tribal officials to be copied during the consultation process. Multiple Tribes/Nations could have an interest in the same location, so multiple Project Notification Letters may be generated. It should be noted that tribal contacts change frequently. It is the responsibility of the District Archaeologist to verify and share current contact information.

2. Continuing Consultation

Once a Tribe/Nation has received notification of a project, the District will continue to transmit relevant information either via Project PATH or by mail to the Tribe/Nation, until the Tribe/Nation directs otherwise. Tribes/Nations 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. All responses received from the Tribes/Nations must be copied to FHWA and the Bureau of Project Delivery Cultural Resources Unit by the District Archaeologist. If a Tribe/Nation does not respond to the initial notification, this should not be interpreted as disinterest on the part of the Tribe/Nation. Sometimes, a Tribe/Nation may not be interested until an archaeological site or a burial is found. In other cases, workload and tribal priorities may prevent a Tribe/Nation from responding in a timely manner.

Informal consultation, including telephone conversations, on-site meetings, web sites, and e-mail is to be encouraged, and documented in the project file and to Project PATH where appropriate. At critical decision points and where decisions are documented, each consulting Tribe/Nation should receive a copy of that documentation, like PHMC and FHWA. Each document

transmittal must have the *PennDOT Project Information Form* as its cover, and should contain a brief synopsis of the material being transmitted. For sensitive archaeological reports that are not transmitted by mail, the IUP secure server may be used to house the document, with a link and file location provided to the tribe(s).

As consulting parties, Tribes/Nations are to be given the opportunity to be involved in the resolution of adverse effects. Archaeological reports, data recovery, or alternative mitigation plans should be sent to consulting Tribes/Nations when they are submitted to PHMC. Tribes/Nations may sign a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA), although they are not required to do so. When a draft MOA or PA is sent to PHMC, FHWA, or other consulting parties for review, the Tribes/Nations who have expressed interest in the project should also receive a copy.

3. Burials and Sacred Objects

The discovery of burials or objects considered sacred by a Tribe/Nation is likely to be of most concern to the Tribes/Nations. If the consultant and the District Archaeologist determine that there is a high potential for burials at an archaeological site, the District Archaeologist shall so inform the Tribes/Nations and FHWA. If burials are found during any stage of archaeological investigations or during construction (see *Chapter XIV*), the District Archaeologist will immediately contact the Bureau of Project Delivery Cultural Resources Unit and FHWA. FHWA will notify all Tribes/Nations within whose geographic area of interest the burial is located, even if the Tribes/Nations previously did not express interest in the project. FHWA will consult with the Tribes/Nations to seek an equitable solution for the treatment of the burials that takes into consideration both the views of the Tribes/Nations and PHMC. Although the Native American Graves Protection and Repatriation Act (NAGPRA) protects Native American graves and sacred objects, this law only applies to discoveries on Federal and tribal lands. Because FHWA does not own land and there are no tribal lands in Pennsylvania, NAGPRA does not specifically apply to FHWA-aid projects unless the discovery is on land owned by a federal agency such as the National Park Service. However, it is the intent of FHWA to follow the spirit of NAGPRA where burials are concerned, through the Section 106 consultation process. In the event that burials or sacred objects are claimed by more than one Tribe/Nation, FHWA will consult with the respective Tribes/Nations and the Advisory Council on Historic Preservation (ACHP).

Under Pennsylvania state law, the Tribes/Nations have no legal claim to artifacts from privately owned or Commonwealth land. If a Tribe/Nation is interested in artifacts from an archaeological site, FHWA will discuss the request with the State Museum of Pennsylvania and the landowner, if applicable. For additional information on the role of the State Museum of Pennsylvania and the curation of archaeological materials, see *Chapter XIV*.

4. Sources

FHWA has prepared a CD-ROM collecting information on tribal consultation from both a state and national perspective. 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 EQAD/Cultural Resources/Tribal

Consultation folder. Also see the *Tribal Consultation Handbook* (Publication 591) and *Tribal Consultation Handbook Appendix* (Publication 592) for more information on the Tribes/Nations and tribal consultation.

NOTE: Due to the evolving nature of Tribal coordination, please refer to the latest version of the *Tribal Consultation Handbook* (Publication 591) and *Tribal Consultation Handbook Appendix* (Publication 592).

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VI. PUBLIC INVOLVEMENT

The Section 106 regulations (36 CFR 800) require federal agencies to seek the views of the public during the Section 106 process. The federal agency must be proactive in locating persons or groups interested in working with them and PennDOT as the project is developed. The public may become involved in the project informally, through comments received at public meetings, emails, phone calls, and the like. Alternatively, the public may become involved in a project as a consulting party that has established a demonstrated interest in historic preservation issues as set forth in 36 CFR 800.2(c)(5). The public outreach effort should reflect the nature and complexity of the project and its effects on historic properties, the likely interest of the public regarding a project's effects on historic properties, confidentiality concerns of businesses and private individuals, and the relationship of the federal involvement to the undertaking (36 CFR 800.2(d)(1)).

The same process is used for 100% state-funded projects reviewed under the MOU with PHMC.

A. CONSULTING PARTIES AND THE PUBLIC

Who Are “Consulting Parties”?

The following parties are entitled to actively participate as consulting parties during Section 106 review:

1. State Historic Preservation Officers
2. Indian tribes
3. Native Hawaiian organizations
4. Local governments
5. Applicants for Federal assistance, permits, licenses, and other approvals
6. Other individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting parties “due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.” Their participation is subject to approval by the responsible Federal agency.

The public also has a role in consultation under Section 106 (36 CFR 800.2(d)):

The public.

(1) Nature of involvement. The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) Providing notice and information. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public

comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

The Advisory Council on Historic Preservation provides the following guidance for Agencies to include public participation in their decision-making:

36 CFR Part 800 provides for public participation throughout the Section 106 review process. Agencies are to provide the public with timely and complete documentation to facilitate their participation, and take appropriate steps to ensure that pertinent information is shared with consulting parties and considered during consultation. At the outset of the Section 106 review, the Agency is required to plan how and when it will involve the public. Such planning is done in consultation with the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO). Members of the public can also provide views to the Agency on their own initiative at any time, although, as part of consultation, time limits may be established for the receipt of comments.

Members of the public may request to formally participate as consulting parties in the Section 106 review when they have demonstrated interest in the undertaking, either because of a legal or economic relation to the undertaking or National Historic Landmark, or because of their concern regarding effects of the undertaking on historic properties. The agency, in consultation with the SHPO/THPO, shall consider all such requests (<http://www.achp.gov/regs-nhl.html>, updated April 2002)

As part of the Section 106 process, the Federal Highway Administration (FHWA) and PennDOT work with consulting parties. Consulting parties include: the SHPO (Pennsylvania Historical and Museum Commission - PHMC), Federally-recognized Indian Tribes, local governments, as well as other individuals and organizations with a demonstrated interest in the project.

Consultation does not mandate a specific outcome. Rather, it is the process of seeking views on the project's effect on eligible historic properties and, if the effect is adverse, how project effects on historic properties should be handled. The following tables define the roles and responsibilities of the public versus consulting parties under the Section 106 Programmatic Agreement. Consulting parties clearly have a more defined role, and it can be advantageous for interested parties to seek consulting party status.

Roles of consulting parties compared to the roles of the public:

	Public	Consulting Party
Receive information in a timely manner about a project and its effects on historic properties	●	●
Participate in the Section 106 process	●	●
Formally seek consulting party status based on a demonstrated interest	●	■
Provide comment on a PennDOT/FHWA finding that a project has an effect on historic resources within 30 days of notice	●	●
Provide comment on how a project would avoid, minimize, or mitigate adverse effects to a historic resource	●	●
Attend and participate in consulting party meetings	■	●
Provide comment on the eligibility of historic resources within 30 days of notice	■	●
Concur on a Memorandum of Agreement	■	●
Object to a PennDOT finding within 30 days of a finding, and potentially have the ability to elevate the objection to FHWA, and Advisory Council on Historic Preservation or National Register of Historic Places, as appropriate	■	●

Consulting parties and the public have a responsibility to:

1. Become knowledgeable about the Section 106 process.
2. Become involved early in a project’s development.
3. Provide information about historic properties in the project’s area.
4. Provide comments and input within established time limits.
5. Consulting parties need to maintain confidentiality on shared information that might cause a significant invasion of privacy or risk harm to a historic resource.

FHWA/PennDOT has a right to:

6. Use existing public involvement procedures under the National Environmental Policy Act (NEPA).
7. Scale the efforts to seek public involvement to the likely interest of the public, the complexity of the project and the likely effects on historic resources.
8. Make the final determination on all requests for formal consulting party status.
9. Make the final determination on a project’s effect on historic resources.
10. Proceed to the next Section 106 step in the process of the SHPO or other consulting party fails to respond to a request comment on a determination or finding.
11. Elevate an objection to the Advisory Council on Historic Preservation or the National Register of Historic Places, as appropriate.
12. Terminate consultation when it becomes clear to FHWA/PennDOT that agreement cannot be reached.

Responsibilities of FHWA/PennDOT to consulting parties and the public:

	Public	Interested Group	Consulting Party
Clearly describe the project at the start of the Section 106 process, including the project schedule	•	•	
Identify and invite consulting parties to participate in the Section 106 process for a project		•	
Consider all requests for formal consulting party status		•	
Acknowledge (the public and consulting parties’) interests in a project and seek to understand them	•		•
Provide clear comment deadlines where appropriate	•		•
Provide findings of effect and supporting documentation	•		•
Invite comments to resolve an adverse effect	•		•
Document comments received from the public and consulting parties	•		•
Have PennDOT work to resolve an objection to a determination of National Register eligibility, and if necessary involve FHWA in attempting to resolve the objection	•		•
Provide findings of eligibility and supporting documentation and invite comments			•
Invite (a consulting party) to concur on a memorandum of agreement, where appropriate			•
Have PennDOT work to resolve a (consulting party) objection to a finding, and, if necessary involve FHWA in attempting to resolve the objection			•

B. PUBLIC INVOLVEMENT PROJECT PATH SYSTEM

In an effort to encourage more efficient, effective, and timely public involvement efforts for Section 106 issues in transportation, PennDOT has entered into a partnership with Preservation Pennsylvania to establish a transportation public involvement clearinghouse, Project PATH. The system serves several purposes: to disseminate information to the public about planned projects that have been put on the State Transportation Improvement Plan (STIP) and about Section 106 steps for projects in design; to solicit interested historic preservation groups for potential consulting party status; to direct public comment and reaction from consulting parties and the public to the appropriate representatives (cultural resources professionals) at PennDOT and FHWA; and, to educate both the public and the transportation community on processes, programs, and best practices in transportation and preservation. The central premise of the Project PATH system is that better consultation results when: information is provided earlier in the process; the decisions made by PennDOT are more transparent and visible as they are being made; and, that the public is better educated on the working of Section 106. The Project PATH system is a tool for making public involvement efforts more successful.

Preservation Pennsylvania is the Commonwealth's only statewide non-governmental organization that advocates for historic preservation and maintains a network of thousands of local historical societies and preservation groups. Preservation Pennsylvania remains a strong and independent advocate for historic preservation, and its partnership with PennDOT does not diminish this role. Project PATH is a forum hosted by Preservation Pennsylvania. The findings and postings for the Section 106 process are controlled by PennDOT exclusively. All public and consulting party comment is directed to PennDOT and addressed by PennDOT, including any comments provided by Preservation Pennsylvania as a consulting party to a project. Preservation Pennsylvania's role with local preservation groups is educational, to assist groups in consulting under Section 106. Section 106 is a process of consultation, not a targeted result.

Although Project PATH can be an effective tool to advance consultation on Section 106 issues, Project PATH is not a substitute for consultation. To restate the definition of consultation:

Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. [36 CFR 800.16 (f)]

Consultation is at heart a conversation. Project PATH is good for soliciting consulting parties (in many cases), notification, for sharing information, and for documenting comments and decisions, but is not the conversation itself. This means that when there are consulting parties, consultation will necessarily involve active discussions using a wide variety of tools, including meetings, phone calls, e-mails, video-conferencing, etc. Consultation requires that CRPs actively engage consulting parties. That Project PATH cannot do alone.

NOTE: Project PATH is good for soliciting consulting parties (in many cases), notification, for sharing information, and for documenting comments and decisions, but is not inherently consultation. Project PATH is not a substitute for consultation.

Project PATH addresses its mission through a number of different and complementary mechanisms. One of the primary mechanisms is a publicly accessible and frequently updated website that provides all available documentation related to important decision points in the Section 106 process for all active PennDOT projects that have the potential to affect historic properties. This includes projects requiring all classes of environmental documents including Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS). Additional information is posted on the website at <http://search.paprojectpath.org/> or at <http://www.paprojectpath.org/>.

C. EARLY INVOLVEMENT

Early public involvement is mandated in the planning and programming stage under the Linking Planning and NEPA provisions of Moving Ahead for Progress in the 21st Century (**MAP-21**). This ensures that the public has adequate opportunity to provide input and present their views. PennDOT has developed policy which implements MAP-21's Linking Planning and NEPA provisions in *Design Manual 1A* (Publication 10A).

In preliminary design, early coordination efforts also help to avoid possible delays later in the transportation project development process. Members of the public may include, but are not limited to, locally elected officials, persons whose properties are affected by the project, historic preservation groups, and other citizens with a concern for the undertaking's effect on historic properties. Individuals or organizations with a demonstrated interest in the project as set forth in 36 CFR 800.2(c)(5) may request to become a consulting party.

The following steps serve both as an early notice of upcoming projects (36 CFR 800.2 (d)(1) and 36 CFR 800.2 (d)(2)), and as a request for information from the public on the identification of historic properties (36 CFR 800.4(a)(3)). Generally, the level of effort in seeking public involvement is set as a result of the scoping field view, and can be documented in the *Project Early Notification/ Scoping Results* Form. What will trigger additional efforts in seeking consulting parties and views of the public is the potential to affect historic properties. Public involvement for more minor actions that are unlikely to affect historic resources can be folded under the NEPA umbrella.

For projects that are not exempt from Section 106, Project PATH is used to manage the solicitation of consulting parties and public involvement. Whether we should solicit consulting parties depends on whether or not the project is likely to have an effect on historic resources. At what step we would solicit depends on the quality of the historic property inventory information available at the time of scoping.

If after scoping, a project has known historic resources and the CRP expects the project will have an effect, then the CRP should solicit consulting parties by posting either an Early Notification/ Scoping Results Form, or, if the CRP is ready to make a finding of effect, posting a Field Assessment and Finding Form on Project PATH. At that time, the CRP would solicit consulting parties. If the CRP suspects that there may be historic properties in the project APE and calls for investigations, then the CRP should post the Early Notification/Scoping Results Form on Project PATH at that time, and, solicit for consulting parties. In order to give interested parties an opportunity to respond and have input into the process, it is recommended that the solicitation of consulting parties be done as soon as is practical, and not unnecessarily delayed.

Solicitation of consulting parties through Project PATH requires two coordinated actions. Notifications to known interested parties need to be sent. In addition, the notifications need to clearly indicate that this is a solicitation for consulting parties, and not simply passing along information.

The presence of historic properties within a project APE does not automatically require solicitation of consulting parties. Some project activities are so minor as to be exempt, even though there may be historic properties in the APE. Projects that have no effect on historic properties also do not require solicitation of consulting parties.

NOTE: There is a difference between notifications that simply provide information and notifications that ask the recipient for a response. In particular for solicitations for consulting parties, the notification should be clear that it is a call for consulting parties and that a response is requested.

Notifications to statewide organizations such as the Pennsylvania Archaeological Council (PAC) may be appropriate on controversial projects, or on projects with significant cultural resource issues. Information obtained from local historical societies can be very helpful in identifying historic properties within a project's APE.

There are other ways to solicit public input, including through the options discussed in PennDOT's *Public Involvement Handbook* (Publication 295). The following additional actions should be taken when there is a likelihood of historic resources in the APE:

1. Letters notifying municipalities of an upcoming project should include a statement indicating that there will be an opportunity to comment on cultural resources when appropriate by the nature of the project. Depending on the level of complexity of the project, public input, as well as input from local officials, on cultural resources can be gathered during a municipal meeting.
2. Property owners have the ability to become consulting parties upon request. They should be solicited throughout the process beginning with the scoping field view and continuing with identification of the Area of Potential Effect (APE), through resolution of adverse effects. Notice of Intent to Enter letters may include an attached statement indicating that there will be an opportunity to comment on cultural resources. If particular historic properties are likely to be affected by the project, owners should be offered the opportunity to apply to become consulting parties. Consultants conducting field research, and PennDOT personnel out on scoping field views, regularly have contact with persons whose properties are likely to be affected by a project. Consultants and CRPs should offer these persons the opportunity to apply to become consulting parties on the project. Information and views provided by these property owners should be documented within the project's Technical Files and in cultural resource reports, and considered during the development of the project. Those comments will become part of the project documentation. If an opportunity to become a consulting party was not afforded to historic property owners likely to be affected by a project through a public meeting, through a scoping field view, through a Notice of Intent to Enter letter, or through other means, it may be appropriate to contact the homeowner in writing to offer this opportunity.

An alternative protocol to sending consulting party invitation notifications to groups on a project-by-project basis may be to consult with individual groups regarding all STIP projects within their area of concern to ascertain the type, frequency, and level of involvement they'd like in upcoming projects. At this time only consultation with federally recognized Tribes/Nations has been on the program level with a protocol established as to when and how specific Tribes/Nations should be notified. Any alternative protocol for providing project group notifications must be approved by the Bureau of Project Delivery. Regardless, individual property owners should still be contacted on a project-by-project basis.

Available forms and templates for soliciting consulting parties for federally funded projects include:

- A [template for contacting potential consulting parties](#) (for additional solicitations that would not be made through Project PATH),
- A [form for potential consulting parties](#) to fill out for PennDOT and the PHMC to consider their application as a consulting party. The same form can be used to notify individuals/groups of their approval as a consulting party,

D. PUBLIC INVOLVEMENT IN ASSESSING EFFECTS AND RESOLVING ADVERSE EFFECTS

Federal regulations require that the federal agency notify all consulting parties, including Indian Tribes/Nations, and invite their views when the federal agency finds that there are historic properties which may be affected. The federal agency is required to consider the views of both consulting parties and the public in assessing and resolving adverse effects (36 CFR 800.5(a) and (c) and 800.6 (a)(2) & (a)(4)). While not explicitly required by the State History Code, consulting party and public views will be sought when there are historic properties which may be affected whether or not the project is subject to Section 106. Unlike other steps in the Section 106 process, consultation to resolve adverse effects does not carry with it a presumed 30 day comment period (36 CFR 800.6).

If a project is likely to affect historic properties, the desire of PennDOT to hear the views of the public on cultural resource issues should be highlighted in public meeting notices, and discussed at public meetings. Providing information on Section 106 and known historic properties in the APE at normally scheduled project public meetings (following the identification phase) is generally sufficient; Section 106 specific public meetings are generally not necessary, and are recommended only in special circumstances (see below). A summary of issues and concerns obtained at public meetings and a list of public meetings held, in addition to other meetings held locally, must be documented within the determination of effect finding. Meetings with consulting parties specific to Section 106 issues may be needed on large, complex projects and/or projects with significant cultural resource issues and/or significant public controversy.

NOTE: The PHMC should be invited by the CRP to any meeting with the public and/or consulting parties for any project which may have an effect on National Register eligible or listed properties. The invitation also should be extended to the appropriate PHMC funded staff member reviewing the project.

In addition to hearing the views of the public at public meetings, the public (whether participating as a consulting party or not) may inform PennDOT of their views on project effects in writing (by letter, project website (if applicable), or email). When a citizen or consulting party representative comments by phone, it is incumbent upon the PennDOT representative receiving the call to request that the individual provide their comment in writing in order for the exact comment to be considered. These views should be documented in the project Effect Report, and/or in project files, and considered as part of project development and in the assessment and resolution of effects for Section 106/the State History Code.

Information on eligibility/effects assessments should be submitted concurrently to PHMC and consulting parties (see *Chapters VII and VIII*) unless otherwise agreed to by FHWA or the U.S.

Army Corps of Engineers (USACE), PennDOT, and PHMC. A Section 106 [Consulting Party Comment Form](#) should be provided to the consulting parties for their use in submitting comments. Any comments from consulting parties and the public will be available for public review on Project PATH (unless it contains sensitive information and/or commenter requests confidentiality and PennDOT and FHWA agree), and must be forwarded to FHWA (or the USACE as appropriate). In addition to documenting other mitigation measures or alternatives, consultation on effects needs to document not only the opinions of PHMC, but of all consulting parties and the public.

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VII. IDENTIFICATION AND EVALUATION

A. ABOVE GROUND HISTORIC PROPERTIES

Consistent with 36 CFR 800.4, PennDOT will make a reasonable and good faith effort to identify above ground historic properties within the Area of Potential Effect (APE). Above ground historic property identification and evaluation will be completed in accordance with the *Secretary of the Interior's Standards and Guidelines; National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*; Pennsylvania Historical and Museum Commission (PHMC), Bureau of Historic Preservation's (BHP) *Standards for the PA Historic Resource Survey Forms, Boundaries, Maps and Photography*, and *How to Complete the Pennsylvania Historic Resource Survey Form* (PHMC, 2008); and *Cultural Resource Management in Pennsylvania: Guidelines for Historic Resource Surveys* (PHMC, 2002). (See <http://phmc.info/historicpreservation> for BHP guidelines and policies.)

The level of effort will take into account the magnitude and nature of the undertaking, past studies, the degree of federal involvement, and the nature and extent of potential effects to historic properties. The District Architectural Historian will confer with the Project Manager and Environmental Manager to determine or confirm the APE for the project and the level of effort needed to identify potentially eligible above-ground cultural resources within the APE.

1. Level of Effort-Initial Steps in Identification

For non-exempt projects, the following steps apply:

- a. The District Architectural Historian should discuss the project with the Environmental Manager and/or the assigned Project Manager to gain an understanding of the project scope, National Environmental Policy Act (NEPA) classification (if available), and project schedule.
- b. Determine a preliminary/working APE and conduct overview-level background research.
- c. The Project Manager should schedule a scoping field view in coordination with the Environmental Manager/Assistant Environmental Manager and the District CRPs (see *Chapter III*).
- d. During the field view the District Architectural Historian should determine the APE (see *Chapter III*), assess whether the project is an exempt activity (see *Chapter IV*), and, if not, should determine the level of identification effort needed. 36 CFR 800.4(b)(1) provides that the level of effort for identification "take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects". During the scoping field view, and/or following the field view, the Architectural Historian should determine whether detailed background research is needed, a reconnaissance survey is needed, and whether topical historic contexts for the APE are needed (an historic context report). The District Architectural Historian should also

consider whether Pennsylvania Historic Resource Survey (PHRS) forms are required for all, none, or just some of the historic properties in the APE in accordance with the requirements and flexibilities provided by the Section 106 Programmatic Agreement (PA).

2. Background Research

The objective of background research is to determine the level of information already available for properties in the APE and to form the basis for historic context development and eligibility evaluations for listing on the National Register of Historic Places (NRHP). All projects requiring environmental review, excluding exempt projects, require background research as the first step in historic property identification and evaluation. Background research is typically done in two steps:

a. Overview Research

This entails research into whether any properties within the APE have been determined eligible or not eligible, are listed on the NRHP, and/or were previously surveyed but no determination was made. Generally, this information can be obtained electronically utilizing the Cultural Resources Geographic Information System (CRGIS) and the NRHP database. This should also entail use of historic maps, available electronically, to determine whether there are any historic properties in the APE, prior to conducting a field view. This level of research will generally be completed by the District Architectural Historian. Overview level research should be completed prior to the scoping field view.

b. Detailed Research

This entails background research to identify inventoried above ground historic properties in or adjacent to the APE, and to assess the level of cultural resources work previously done in the general area. Detailed research should be performed by utilizing the CRGIS as well as files maintained at the PHMC, including, but not limited to:

- PHRS Forms
- NRHP files
- Area cultural resource management reports (ER files).

Unless otherwise directed by the District Architectural Historian, this should also include review of relevant primary and secondary source material including, but not limited to:

- Archival collections
- Historic maps
- Atlases
- Local histories

This should include research at regional and local historical societies, libraries, and other research facilities, as appropriate.

Informant interviews with property owners and other informants are suggested on large projects, or projects with large numbers of cultural resources, and/or when likely to produce meaningful data not available elsewhere. In addition, the consulting party and public involvement process may provide opportunities to acquire information from consulting parties, and other individuals and organizations likely to have knowledge of historic properties in the APE.

Typically, background research of this type will be conducted by consultants with the results provided as part of an Eligibility Report. On large projects, typically Environmental Impact Statement (EIS) level projects, the CRP can request a reconnaissance survey (also known as a “windshield” survey) and the results of the background research will be provided in a reconnaissance survey report (see *Section A.3* below). In cases where an Eligibility Report is not needed/requested by the District Architectural Historian, this information should be provided to the District Architectural Historian in a format specified by the District Architectural Historian ahead of time.

3. Reconnaissance Surveys-Large Projects

In accordance with 36 CFR 800.4(b)(2), large projects may be conducive to a phased identification approach. Reconnaissance surveys (also referred to as “windshield surveys”) can be used on large projects with multiple alternatives or large land corridors as an aid in evaluating project alternatives. The decision to conduct a formal reconnaissance survey on a particular project should be made by the District Architectural Historian, in conjunction with the Project Manager, and/or Environmental Manager. Once alternatives have been narrowed, or in certain cases, when a preferred alternative has been selected, based upon the results of the reconnaissance survey and other environmental and engineering considerations, eligibility evaluations should be conducted on properties over 50 years, not previously surveyed, or that require a re-evaluation. Once alternatives have been narrowed, the APE should be reassessed to determine if it is an appropriate size for the current range of alternatives using the results of the reconnaissance survey as a guide for narrowing or otherwise adjusting the size of the APE.

The objective of a reconnaissance survey is to:

- Evaluate the area for the kinds of historic properties present.
- Establish property types.
- Affirm which of any previously evaluated or surveyed properties are extant.
- Determine whether significant changes have occurred to previously evaluated or surveyed properties since the NRHP determination/nomination.
- Catalog the locations of properties over 50 years and assess the likelihood that non-evaluated properties would be eligible for listing in the NRHP.
- Assess the area for the possibility of historic districts, including rural historic districts.
- Provide guidance for the use of short forms on properties and/or determine if properties should be eliminated from further recordation and research due to a clear loss of integrity, or compared to others, would not adequately reflect the important themes of the study area (see *Section A.4* below on historic contexts).

Reconnaissance survey reports are often called for in combination with an historic context report and may be provided within a single report. See *Chapter XII* for a checklist of report requirements.

4. Historic Contexts

In accordance with NRHP guidance (<http://www.nps.gov/nr/publications/index.htm>), and guidance from the PHMC, including the document *How to Prepare an Historic Context for Individual Properties and Historic Districts* (see <http://phmc.info/historicpreservation>), all properties to be assessed for NRHP eligibility must be evaluated within their historic context. Significance dictates a comparison between similar properties such that, upon comparison, some properties will be considered significant while others may not be significant. Historic contexts organize information based upon themes within specific geographical and chronological confines, in order to assist in this comparison.

For projects with small numbers of historic properties, and/or for small projects where properties relate to themes previously explored (typically through other projects, or through PHMC thematic/historic context studies, such as the statewide agricultural context), historic contexts should be limited to providing the historic context for a particular property within the body of the PHRS form for each property with reference to such prior studies/existing statewide contexts. (See <http://phmc.info/historicpreservation> for a current list of Pennsylvania multiple and thematic resource property documentation accepted by, or listed in, the NRHP.) A third of properties listed in the NRHP have been submitted under a multiple or thematic context.

The District Architectural Historian has the discretion to determine when separate, thematic historic contexts are needed and should be developed for a project, in keeping with 36 CFR 800.4(b)(1) which provides for flexibility in level of effort. The District Architectural Historian may seek the opinion of the PHMC in making this determination.

For thematic historic contexts, background research (which helps to establish essential information such as dates of settlement, transportation routes, development of area industries, etc) and knowledge of the survey area established through field views should be used to establish what the important historical themes, development patterns, events and people are that influenced the growth of the area. Develop narratives on each of the significant themes with a mind towards utilizing the results to determine property types and what properties in the area may be significant locally, in the state, or nationally. The contexts must relate to the APE as much as possible, with an understanding that properties in a particular APE are usually part of a broader area and pattern of events. It is important to rely on knowledgeable local authorities for information and guidance in conducting research and locating sources of information. It is also important to identify whether any historic contexts already exist for the area or region and utilize them to the extent possible.

<p>NOTE: The contexts should not duplicate previous efforts but can refine them to the immediate study area.</p>

In terms of the NRHP Criterion C, historic contexts must identify the degree to which buildings in the area exhibit localized architectural styles (such as regional variations on national styles) or

generally utilize styles and forms commonly found throughout the state or country and must compare this population to similar properties within the chosen geographical area to determine what characteristics would make a particular example significant.

The historic context(s) should identify the expected property types, which NRHP Criteria (or criterion) a property would be eligible under, and which aspects of integrity must be present for a property to be eligible. It is understood, however, that this may change/be refined as eligibility evaluations for particular properties in the APE are conducted.

Historic contexts must relate to the project area and the property types found in a scoping field view, and/or reconnaissance survey and property types known to be in the area historically. For example, if background research and historic maps reveal that there were tanneries in the county, and that is a significant historic industry for the county, but no tanneries or related buildings were ever in the APE, do not develop an historic context for tanneries for the project.

While it is important to utilize primary resources, particularly maps, atlases, photographs, and historic prints and photographs in developing historic contexts, cost and time necessitates that much information will come from secondary sources. However, reliance on census, tax records, and period newspapers may be necessary where an area has not been the subject of previous scholarly work. The nature and extent of scholarly research needed on a particular project should be discussed at the onset of cultural resource studies. Information should be arranged chronologically within each context.

On larger projects, where thematic historic contexts are called for, contexts must be developed and approved by the CRP, prior to conducting NRHP evaluations. They can be developed in conjunction with, or immediately following a reconnaissance survey, including surveys in which recommendations for PHRS short forms are made. For larger projects these historic contexts will likely need to be refined or modified as the project is advanced and detailed primary research is conducted on individual properties.

The Historic Context Report may be combined with the reconnaissance survey as one report, at the discretion of the District Architectural Historian. Alternatively, the historic contexts may be incorporated in a Determination of Eligibility Report, again at the discretion of the District Architectural Historian. This decision will be based upon the scale of the project and the project schedule, with consideration of any views expressed by the PHMC or consulting parties. See *Chapter XII* for a checklist of report requirements.

5. Application of National Register Criteria to Properties in the APE

a. Pennsylvania Historic Resource Survey Forms

The PHMC maintains information, usually in the form of PHRS forms (or “cards”), on over 100,000 above ground properties. This information, at least in part, is available in the CRGIS. There is a standard PHRS form, and a short form. It is up to the discretion of the District Architectural Historian to determine when a regular form, or a short form should be used. (Additional information on the use of the short form is found in *Section A.5.e* below) At a minimum, PHRS forms must be completed for any property that could be adversely affected unless a PHRS form has been completed previously. If the property was evaluated more than

five years ago, an updated form may be necessary. (See *Section A.6* below regarding scope of identification efforts.)

The PHRS form is the method by which properties in Pennsylvania are formally evaluated for their eligibility to be listed on the NRHP. Under Section 106, properties that are eligible for the NRHP receive the same consideration as properties that are listed. Collectively the PHRS forms also serve as an inventory of properties in Pennsylvania and can, and should be, used as tools for the evaluation of similar resources. The NRHP serves as Pennsylvania Register of Historic Places, which is referenced in the State History Code.

PHMC's publication, *How to Complete the Pennsylvania Historic Resource Survey Form*, in its most current version, should be followed when completing PHRS forms for PennDOT and any additional standards PHMC has or may develop for completing or submitting PHRS forms. PHMC's *Guidelines for Historic Resource Surveys*, also contains important information for evaluating properties. In addition, NRHP bulletins produced by the National Park Service should be relied upon in making recommendations or determinations of eligibility. Of particular utility are *How to Apply the National Register Criteria for Evaluation and Defining Boundaries for National Register Properties* (see <http://www.nps.gov/nr/publications/index.htm>). Historic narratives and physical descriptions must be clear and concise.

NOTE: NRHP Criteria are as follows:

Criterion A: Event. A property may be eligible if it is associated with events that have made a significant contribution to the broad patterns of our history. Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history. The property must have an important association with one or more events, or pattern of events, important in the defined context.

Criterion B: Person. Properties may be eligible for the National Register if they are associated with the lives of persons significant in our past. Criterion B applies to properties associated with individuals whose specific contributions to history can be identified and documented and refers to individuals whose activities are demonstrably important within a local, state or national historic context. It is generally restricted to those properties that illustrate (rather than commemorate) a person's important achievements.

Criterion C: Properties may be eligible for the National Register if they embody the distinctive characteristics of a type, period, or method of construction, or that represent a significant and distinguishable entity whose components may lack individual distinction. To be eligible under Criterion C, the property must meet at least one of the following requirements: 1) embody distinctive characteristics of a type, period, or method of construction, 2) represent the work of a master, 3) possess high artistic merit, or 4) represent a significant and distinguishable entity whose components may lack individual distinction.

Criterion D: Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history. Criterion D has two requirements: 1) the property must have, or have had, information to contribute to our understanding of human history or prehistory, and 2) the information must be considered important.

Where a project has separate thematic historic contexts, the NRHP evaluation must clearly relate to the recommendations for what makes a property eligible. Sufficient information must be gathered to determine whether any of the properties being evaluated possess significance on a National, State, or local level. However, it is not necessary to exhaustively research a property to determine the applicability of all four NRHP Criteria if there is sufficient information to demonstrate that a property is eligible under at least one criterion.

For example: A property is clearly eligible as a good example of a regional variation of the Queen Anne style (i.e. it possesses both significance and integrity under Criterion C - architecture), and research into the history of the community reveals that the property is not likely to have associative significance with an important event (Criterion A) or significant individual (Criterion B). It is acceptable to indicate the extent and limitations of research on the PHRS form.

It is important to note that Criterion D should be considered for every property, even if the property is eligible under another criterion. However, full consideration of Criterion D will typically be under the guidance of the District Archaeologist. (*See Section B* below for more information on Archaeological Identification and Evaluation).

NOTE: Regarding Interior Photographs:

The following guidance should be followed regarding acquisition of photographs of interiors of buildings: PennDOT, or its consultants, should generally not ask a private property owner for interior photographs except where it is important to the property type being evaluated and the context under which it is being evaluated and:

1. It is a property normally or occasionally open to the public – such as a commercial building or house museum and the property owner is willing, and/or
2. The property owner is a consulting party and is willing, and/or
3. The property owner volunteers through conversation taking place in the course of normal field survey work.

b. Historic Districts and Community Evaluations

If historic properties are related spatially and through shared historic development they should be evaluated as a potential historic district using a single PHRS form. Individual property forms are not needed unless the neighborhood/community is not eligible for listing in the NRHP *AND* properties suspected to have individual significance and integrity are likely to be individually affected by the project. One inventory form may be used for multiple buildings if they are connected visually, physically, or architecturally (e.g. row houses) even if not part of a potential historic district.

National Park Service guidance must be used in determining whether or not a district would meet NRHP Standards. In addition, PHMC offers the following guidance:

- The area should possess a high degree of historic and architectural integrity with a minimum of non-historic buildings and features, such as parking lots.
- The area should possess an implied cohesiveness through characteristics of architectural style such as height, proportion, scale, rhythm, and detail.

- The area should possess a particular and identifiable character, or a special historical or aesthetic atmosphere that distinguishes it from the surrounding area.
- The area should be readily definable by physical factors (railroads, highways), topographical boundaries (hillsides, streams), and historical factors (boundaries of original settlement, concentrations of historic buildings and sites).
- The area should be significant in the historical and cultural life of the locality, the state, or the nation.

Completion of contributing/non-contributing maps and/or lists for historic districts will be at the discretion of the District Architectural Historian according to the nature of the project and the relationship of the contributing/non-contributing resource to the APE. Contributing elements should be identified in the area of impact if a project impacts an historic district. The District Architectural Historian may need to consult with the Environmental Manager regarding requirements under Section 4(f) of the U.S. Department of Transportation Act of 1966 in making this determination. (See the *Section 4(f) Handbook* (Publication 349), *Section VI.C.3*, for more information.)

Completion of full boundary descriptions, justifications, and maps for eligible historic districts may not be necessary. It will depend upon the scope of the project and the relationship of the historic district to the project. If, for example, a project's APE lies at the edge of an historic district, and the project is generally not visible from the majority of the district, it may only be necessary to delineate boundaries for that portion of the historic district nearest the project. The level of effort for historic district identification and delineation will be at the discretion of the District Architectural Historian.

c. Act 167 Historic Districts, the Administrative Code, and the Municipal Planning Code

The 1961 Historic District Act (Act 167, found at <http://phmc.info/historicpreservation>), authorizes all municipalities in Pennsylvania, except for cities of the first and second class (i.e. Pittsburgh and Philadelphia), to create and designate historic districts under local ordinance. The Pennsylvania Municipalities Planning Code (Act 67 & 68, Article 6, Section 603-8-7-G-2 and Section 604) authorizes municipalities to use zoning for protection and preservation purposes. The Municipalities Planning Code (as revised in 2000) also includes a provision for historic preservation planning. An Historic Preservation Plan is a working document to identify historic and cultural resources in the county or municipality and to create goals, policies, and strategies for their appropriate use, conservation, preservation, and protection.

Historic District Ordinances are subject to certification by PHMC that it meets their standards and criteria for significance. Significance for local historic district designation is not the same as significance under NRHP Criteria. A number of areas protected by local historic district ordinance (i.e. a number of Act 167 historic districts) are not NRHP eligible. Therefore, these Act 167 historic districts are not specifically protected by either the State History Code or Section 106.

However, NEPA requires federal agencies to integrate cultural and environmental values into their decision making process (i.e. NEPA requires consideration of "cultural resources")

including those that do not specifically meet National Register Standards and are therefore not considered under Section 106). Therefore, NEPA, together with the principles of Smart Transportation, require the consideration of local values as articulated in Act 167 Historic Districts in the NEPA document. For further information on Act 167 Historic Districts refer to PHMC's publication *Historic District Designation in Pennsylvania* which is available for download at <http://phmc.info/historicpreservation>. The Act 167 Historic Districts are mapped in the CRGIS.

For roadway projects involving a state road or state owned bridge, PennDOT is not required to comply with the local historic district ordinance(s). Under the Administrative Code (71 P.S. 512(a)(10)), PennDOT has exclusive jurisdiction over all designated State transportation facilities. The Administrative Code provides that PennDOT has the authority to “mark, build, rebuild, relocate, fix the width of, construct, repair, and maintain State designated highways and transportation facilities and rights of way” and to “superintend, supervise and control the work of constructing, reconstructing, maintaining and repairing State designated highways, and other transportation facilities and rights of way (71 P.S. 512(a)(8) and (11)”. Furthermore, the Municipalities Planning Code contains a provision that specifically exempts the application of its provisions to PennDOT matters by stating that “this act shall not repeal or modify...any laws administered by the Department of Transportation of the Commonwealth of Pennsylvania (53 P.S. 11202)”. Construction of, or alteration to, maintenance facilities, however, does require compliance with the local ordinances.

d. Bridges

Bridge Survey: A comprehensive historic bridge inventory and evaluation was completed in 2001. The 1996-2001 historic bridge survey considered all bridges 20 feet or greater carrying a highway/road, or under which a highway/road passes. As noted in the historic context for the bridge inventory and evaluation (available at www.penndotcrim.org) each bridge in the survey was evaluated on its own merits based upon a full interpretation of National Register Criteria A, B, and C and considered numerous areas of significance such as transportation, community planning and development, engineering, and landscape architecture, that relate to bridge and transportation development. As noted in the methodology, the context sought to “distinguish the subtle yet often critical distinctions of significance among large numbers of similar resources with a common history”. The evaluation considered national, state, and local significance. A panel of experts reviewed the recommendations for those bridges that advanced beyond Phase I (paper file review) and were field reviewed/further evaluated and the PHMC concurred with these determinations. Therefore, NRHP determinations of individual eligibility exist for all bridges in PennDOT's Bridge Management System (BMS). This includes all bridges 20 feet or greater carrying vehicular traffic or through which vehicular traffic passes (e.g. railroad overpasses). Unless significant new information is revealed regarding a particular bridge, such as might be brought forward through the public involvement process, no bridge should be reevaluated for eligibility until such time as the bridge inventory is updated. In general, it is most appropriate to reconsider the eligibility of a particular bridge only when placed in context as part of a full reevaluation of bridges of its type and bridges in the region and state.

The PHMC has included the results of the bridge inventory and evaluation (determinations of individual eligibility) in the CRGIS. However, the database is available on the PennDOT

Cultural Resources website as well. Bridges can be located most easily by the Bridge Management System (BMS) number, but one can search utilizing any of the available fields.

NOTE: The individual NRHP determination for a particular bridge is found in the field titled “CY 01 Individual Eligibility”. Please note that this determination may differ from the consultant recommendation (which is captured in the field “AGL recommendation”) and, therefore, may not correspond to the statement of significance. Print-outs of survey forms for submission that do not contain this CY01 Individual Eligibility field on them are not acceptable.

Bridge Inventory and Evaluation Update and/or Reevaluation: PennDOT is investigating conducting an update to the 2001 comprehensive bridge inventory and evaluation, particularly to consider bridges built since 1956. However, due to concerns over the loss of metal truss bridges since initiating the bridge inventory and evaluation, metal truss bridges were reevaluated following the criteria established by the historic context for this study. The results of this study are available on the PennDOT cultural resources webpage (www.penndotcrm.org) and have been incorporated into the CRGIS and bridge inventory database. The database will clearly indicate the current (2008) determination of eligibility for truss bridges. Because conducting a new statewide comprehensive historic bridge inventory and evaluation will require considerable time and likely require considerable funds, no schedule for its update has been established to date. The CRP is responsible for evaluating (or causing the evaluation of) bridges built since 1956 or otherwise not evaluated.

Bridges Contributing to Historic Districts: Although the bridge inventory forms contain recommendations for historic districts in or near bridges, these should be considered recommendations only as the PHMC did not concur with the results of the bridge evaluations with respect to historic districts and, additionally, passage of time requires that historic district potential – and eligibility - be revisited at the time of a project. The CRP, pursuant to the Section 106 Programmatic Agreement (PA), is responsible for evaluating and determining if a bridge might be part of, and contribute to, an NRHP-eligible historic district. Historic districts, to which a bridge may contribute, can include linear historic districts such as railroads and canals. In general, bridges that date to the period of significance and possess characteristics that contribute to the significance of the district would be considered contributing. According to National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*, (See <http://www.nps.gov/nr/publications/bulletins/nrb15/>) a bridge (or other property dating to the period of significance) cannot contribute if substantially altered since the period of the district’s significance or if it does not share the historic association of the district. Bridges considered contributing require the same consideration, in terms of avoidance of affects, as individually eligible bridges. However, the nature of the effects and the nature of appropriate mitigation may differ depending on whether a bridge is individually eligible or contributing.

Stipulation II.H of the Section 106 PA - Bridges Less Than 20 feet: Pursuant to Stipulation II.H of the Section 106 PA, it is agreed by the signatories to the Section 106 PA that most bridges less than 20 feet in length are categorically considered not individually eligible for the NRHP. The exceptions to this are covered bridges, stone arch bridges, and closed spandrel concrete arch bridges, which the parties to the agreement agreed could, under certain circumstances possess individual significance. These specific bridge types warrant evaluation

for individual eligibility in particular because they are among the types of small bridges that can pre-date the period of standardization and are more likely to possess distinguishing details or be significant as the work of a noted engineer or bridge firm. While other early concrete bridges (such as slab bridges, T-beam bridges, rigid frame, and reinforced concrete girder bridges) as well as later concrete bridge types (such as channel beam bridges, prestressed and post-tensioned concrete beam bridges) may also be found prior to their frequent use in the period of standardization (beginning in the 1910s) it is typically the longer (greater than 20 feet), early examples that have distinguishing details.

NOTE: Stipulation II.H of the Section 106 PA relates only to individual NRHP eligibility. It is the responsibility of the CRP to determine whether a bridge that is less than 20 feet contributes to an historic district (either an existing historic district or one potentially eligible.)

Old Bridges Versus NRHP-Eligible Bridges: Section 106 of the National Historic Preservation Act, as well as the State History Code, requires consideration of effects to properties determined eligible for the NRHP. Neither requires consideration of properties that do not possess significance under NRHP Criteria, and/or that are not contributing components of an NRHP-eligible or listed historic district. However, it is important to consider that old bridges are often valued by the community and warrant consideration under the National Environmental Policy Act (NEPA) and other environmental laws and regulations. Alternatively, the bridge may be part of an Act 167 Historic District (see ***Section A.5.c*** above). The District Architectural Historian may be requested to become involved in working with the public and community groups regarding concerns over the potential loss of old bridges, and/or the design of replacement bridges in areas valued by the public for their scenic or old character.

e. Short Forms

PHRS short forms may be used for properties that are clearly not eligible and are not farms or farmsteads or historic districts, provided that the District Architectural Historian does not require full evaluations.

Per the terms of the Section 106 PA, the District Architectural Historian has the discretion to decide if short forms are needed for any properties within the APE (See ***Section A.6*** below). In general, short forms are unlikely to be needed since, under the terms of the Section 106 PA, PHRS forms, including short forms, are not required for properties that are not eligible.

The BHP requests the use of the PHRS form (rather than a short form) for farms, even those which have clearly lost integrity of materials, workmanship, materials and setting, including loss of most or all associated farmland and a majority of outbuildings. However, completion of an historic narrative is not required except to note the extent of research completed and a brief summary of why the farm/farmstead is not eligible. Historic aerial mapping can be very helpful to demonstrate a lack of integrity. However, the CRP always has the discretion to not require completion of a PHRS form for a farm if the farm is not eligible or will not be adversely affected.

Subsequent research may be requested by the PHMC and/or the District Architectural Historian up to and including a full PHRS form upon review of the short form for a property. All short forms must include a photo of the subject property and a US Geological Survey (USGS) quadrangle map locating the property. When using the short form to update previously evaluated or surveyed properties the existing PHMC Key number must be included. See PHMC guidance for minimal information required for entry into the CRGIS (www.phmc.state.pa.us). PennDOT-specific short forms may be developed that meet BHP minimal standards or the minimal fields can be completed on the full form.

f. Re-evaluations

District Architectural Historians are responsible for determining whether properties that were evaluated previously, particularly those evaluated five or more years ago, warrant a new evaluation to reassess significance and/or integrity. Non NRHP-listed properties should be reassessed every five years. The intent is to ensure that only properties that retain significance/integrity remain eligible. The concern is that, in years past, some properties were determined eligible with minimal information and, in some cases, were not truly significant. Also, perceptions of significance, and also knowledge of significant trends/events (through the evolution of contexts) change over time. Additionally, many properties have been altered since being determined eligible or may have been rehabilitated since being determined not eligible.

Re-evaluations could be done either formally or informally depending upon the nature of the project, potential for impacts, and/or degree of controversy on the project, at the discretion of the CRP who may seek the opinion of the FHWA and/or PHMC in this matter:

Informal process: include information in the body of an *Above Ground Historic Properties Field Assessment and Finding Form* (see **Chapter VIII** for further information on this form), or as an attachment to this form, on changes or a lack of changes, to previously documented properties.

Formal process: Submit an amendment to an existing PHRS form, with reference to the existing PHMC Key number, to the PHMC for review as either part of a submission, or as an attachment to the *Above Ground Historic Properties Field Assessment and Finding Form*. The submission should note whether or not review by the BHP NRHP Committee is necessary.

NRHP-listed properties should only be re-evaluated if field inspection or background research reveals significant changes since the nomination that may have affected their NRHP integrity, or if historic contexts written since the nomination(s) (including contexts as part of the current project) reveal information that may affect the significance established in the nomination(s).

In cases where properties in the APE were previously surveyed but no NRHP recommendations were made, the properties should be assessed for eligibility to the NRHP. Where a PHRS form exists, this evaluation could be prepared as an amendment to the existing PHRS form with reference to the existing PHMC Key number when an amendment to the PHRS form is required by the Programmatic Agreement. Where a PHRS form does not exist, as may be the case with local surveys, a PHRS form should be completed if required by the Programmatic Agreement.

6. Scope of Identification Efforts

The scope of identification will vary according to the nature and scale of the project and its potential to affect historic properties. While the District Architectural Historian is tasked with considering and determining the eligibility of ALL historic properties in the APE (on behalf of the federal agency for federally funded projects) pursuant to the Section 106 PA and/or the State History Code, a PHRS form will not necessarily be required for all properties. Accordingly, a consultant may be tasked to provide PHRS forms for only select properties, or a consultant may be tasked to prepare a Determination of Eligibility Report assessing all properties 50 years old or older not previously evaluated. District Architectural Historians may also request specific information such as proposed NRHP boundaries marked on a 7.5 minutes USGS quadrangle map to be part of the submission to the PHMC. Full architectural surveys and evaluations may be warranted for a project where the District Architectural Historian is unfamiliar with the history of the APE and/or needs further information on the history of the APE; where most properties in the APE appear to have integrity and significance; and/or where properties in the APE appear to be part of an historic district and the project may have an effect. Full architectural surveys typically consist of the evaluation of all properties in the APE utilizing PHRS forms, and/or PHRS short forms (see BHP minimal record guidance at <http://phmc.info/historicpreservation>) for all historic properties not previously evaluated. The level of effort required, pursuant to the Section 106 PA, is dependent on anticipated effects as follows:

a. Identification and Evaluation for Projects That Will Not Have Effects

Under the terms of the Section 106 PA, the District Architectural Historian has the authority to determine properties not eligible for the NRHP without completion of PHRS forms. He/she may, however, elect to complete (or call for the completion of) forms for those properties. Typically full forms, or short forms, will be completed for non-eligible properties only when the CRP feels that this is needed due to the nature of the project and/or when there are anticipated (or known) PHMC, consulting party, and/or public concerns. Minimum requirements for properties to be added to the CRGIS are provided on PHMC's website under the heading "How to Complete the PHRS Form". In cases where short forms are called for, either the minimal fields in the full form should be completed, or a one to two page form that contains the necessary fields can be utilized.

The District Architectural Historian also has the authority to determine properties eligible for the NRHP without completion of a full PHRS form when that property, and all other properties in the APE, will not be affected (when an above-ground finding of No Effect is anticipated). However, the CRP is required to submit a minimal record *PHRS form* (or short form) to the PHMC for the CRGIS (see www.phmc.state.pa.us for PHMC minimal record guidance). The *Above Ground Historic Properties Field Assessment and Finding Form* provides a check box for the CRP to indicate whether or not the CRP is seeking PHMC concurrence on any or all findings of eligibility made pursuant to the No Effect Finding. If the project will result in a finding of No Effect for above-ground properties, the CRP may submit PHRS forms to the PHMC with an indication that the PHRS forms submitted are for their records only.

The PHMC may also request the completion of a PHRS form for any project they are reviewing. The decision on whether or not the completion of a PHRS form is warranted is at the discretion

of the CRP in consultation with the PHMC and/or the Bureau of Project Delivery Cultural Resources Unit, and, as warranted, with the federal agency. Consideration should be made to concerns raised regarding specific properties by the public and/or a consulting party. (See **Section C** below for information on dispute resolution when either the PHMC, public, or a consulting party disagrees with level of effort on identification.)

There are also certain property types that generally warrant evaluation through a full PHRS form due to current thematic research initiatives of the PHMC, subject to whether or not the property may be affected and the degree of integrity. For example, a farm that has complete loss of integrity, including loss of agricultural lands, may not require a full form when an explanation is provided. Current research initiatives of PHMC include property types such as: farms, subdivisions, schools, and black history. The CRP is encouraged to contact the PHMC regarding completion of a PHRS form for properties of this type and to stay abreast of, and cooperate with (to the extent required by the nature of the project), current research/context initiatives.

b. Identification and Evaluation for Projects That May Have an Adverse Effect and Certain No Adverse Effect Projects

Under the terms of the Section 106 PA, the CRP can call for completion of PHRS forms for only those properties within the APE that he/she feels have the potential to be NRHP eligible and the potential to be adversely affected. However, documentation of properties determined by the CRP to be not eligible must be sufficient to meet the standards of 36 CFR 800.11. For example, if a project will be having an Adverse Effect on an NRHP-eligible bridge and there is a property that is over 50 years old in the APE that is clearly lacking in integrity, the CRP can sufficiently describe the non-eligible property in the *Above Ground Historic Properties Field Assessment and Finding Form*.

For projects anticipated to have effects, full PHRS forms must be completed for properties over 50 years in the APE that are potentially eligible (or properties less than 50 years that might possess exceptional significance), including potentially eligible properties that ultimately result in a finding of no adverse effect. The CRP must seek the concurrence of the PHMC on these determinations when the project results in a potential adverse effect (see **Section 8** below.)

<p>NOTE: Only minimal record PHRS forms must be completed for eligible properties that will not be affected. If an eligible property is going to be rehabilitated a full PHRS form should be completed even if the finding ultimately results in a finding of no effect.</p>

7. PennDOT Review of Identification and Evaluation Reports/Documentation

At the discretion of the District Architectural Historian, PHRS forms can be contained within an Identification and Evaluation Report (also referred to as a Determination of Eligibility Report) or as stand-alone PHRS forms. Generally, when there are very few PHRS forms, when separate historic context narratives are not required as part of the project, and the project is to be submitted utilizing the *Above Ground Historic Properties Field Assessment and Finding Form*, a report is not necessary.

See *Chapter XII.A.4* for a checklist of minimal requirements for Determination of Eligibility Reports and electronic documentation requirements. The District Architectural Historian is responsible for reviewing project deliverables, including but not limited to the Eligibility Report.

The District Architectural Historian is responsible for reviewing consultant-prepared reports and documentation to ensure quality and consistency with the standards in *Chapter XII*. Unless otherwise directed, the consultant should submit a draft report or documentation to PennDOT in electronic format on a CD, or as an email file. The District Architectural Historian may request revisions, as appropriate. When a report or documentation is prepared by the District Architectural Historian, Bureau of Project Delivery Cultural Resources Unit may review it for quality assurance.

When the District Architectural Historian agrees with the consultant's recommendations, the District Architectural Historian will use the report or documentation to support his/her determination of eligibility and/or finding of effect (see *Chapter VIII*). If the District Architectural Historian disagrees with the consultant's recommendations, the District Architectural Historian will discuss the disagreement with the consultant. If the disagreement is not resolved, the District Architectural Historian will prepare a statement on his/her finding including a justification for his/her position, and noting that the finding is different from the consultant recommendation. The District Architectural Historian will incorporate this statement into his/her determination of eligibility and/or finding of effect, and will include the consultant's report in the documentation (see *Chapter VIII*). The District Architectural Historian is strongly encouraged to seek PHMC's concurrence on eligibility findings that differ from the consultant's recommendation (i.e. request that the property be reviewed by PHMC's National Register Committee), even when not required by the terms of the Section 106 PA.

8. Documentation of Determination of Eligibility and Consultation

a. Consultation for Projects Not Having an Effect

Under the terms of the Section 106 PA, PennDOT is not required to consult with the PHMC on determinations of eligibility it makes on behalf of the FHWA for undertakings that will not affect historic properties. However, the CRP may request the views/seek the concurrence of, the PHMC on any determination of eligibility, or prior to making a determination of eligibility. Consultation on eligibility may be conducted as a separate submission, or may be combined with the finding of effect on an [*Above Ground Historic Properties Field Assessment and Finding Form*](#). The documentation will be made available to the PHMC, consulting parties, and the public (see *Chapter VI* for further information on involving the public and consulting parties, including the requirement to seek information, as appropriate, from consulting parties and individuals likely to have knowledge of historic properties in the area).

b. Consultation for Projects Having an Effect

Under the terms of the Section 106 PA, PennDOT is required to consult with the PHMC on determinations of eligibility it makes on behalf of the FHWA for undertakings with a potential to adversely affect historic properties. PennDOT is also required to consult with the PHMC for certain projects that might result in a finding of no adverse effect: 1) Rehabilitation projects

where the no adverse effect finding is based upon the work being consistent with the *Secretary of the Interior's Standards*, 2) projects with public controversy on historic preservation issues, or 3) upon the request of a consulting party or FHWA. The CRP may also choose to seek SHPO concurrence for any eligibility finding. Consultation on eligibility may be conducted as a separate submission, or may be combined with the finding of effect on an [Above Ground Historic Properties Field Assessment and Finding Form](#). The decision to consult as a separate step will be contingent on the nature of the project and the degree of expressed or anticipated PHMC, public, and/or consulting party concern. The documentation will be made available to the PHMC, consulting parties, and the public (*see Chapter VI* for further information on involving the public and consulting parties). The *Above Ground Historic Properties Field Assessment and Finding Form* provides a check box for the CRP to indicate that the CRP is seeking PHMC concurrence on the findings of eligibility made pursuant to a No Adverse Effect or Adverse Effect Finding.

It is important to note that whether or not the District Architectural Historian consults with the PHMC on a determination of eligibility, consulting parties and the public must still be afforded an opportunity to provide information on historic properties that may be present within a project's APE. This effort should ideally be undertaken during background research.

NOTE: It is critical to understand that when a project has an effect on historic resources, it is not possible to expedite the comment period for the effect finding through the SHPO comment period. Even if the SHPO expedites comments on a no adverse or adverse effect finding, the Section 106 Programmatic Agreement mandates that the public and consulting parties have 30 days to comment.

Consequently, project managers need to build adequate time into preliminary design schedules to allow for this comment period. Alternatively, project managers may accept a certain level of risk in moving forward with NEPA approval, specifically the potential for public or consulting party comments that must be addressed post-NEPA and which may entail a re-evaluation of the NEPA document. Where there have been no identified consulting parties, and where the project is non-controversial, this risk may be acceptable.

For projects where an EIS will be prepared or for other complex projects, consultation on the APE, identification, eligibility determinations, and assessment of effect are more often treated as separate steps in the process. Consultation with the PHMC will be required throughout the Section 106 process, regardless of the effect.

When the District Architectural Historian seeks the PHMC's concurrence on a determination of eligibility as a separate step in the process, the District Architectural Historian will prepare a letter to the PHMC and attach either an Identification and Evaluation Report or other supporting documentation for eligibility. Copies will be made available to FHWA, Bureau of Project Delivery Cultural Resources Unit, and consulting parties. If the determination of eligibility is combined with the determination of effect, the District Architectural Historian will follow the procedures in *Chapter VIII*.

c. Review Period

Per 36 CFR 800.3(c)(4), the PHMC and consulting parties have 30 days to review and respond to submissions made by PennDOT on behalf of the FHWA (or USACE). (The 30 day review period for the PHMC shall be superseded by the terms of the current FHWA/PennDOT/PHMC Interagency Funding Agreement. However, as noted above, it does not foreclose the public comment period in certain cases, and therefore provides no expediting of the project.) If the PHMC or consulting party does not respond within the review period, PennDOT may proceed with the next step in the process. (For projects where the USACE is the lead agency, the District should check with the appropriate USACE District before proceeding. Some USACE Districts insist upon a response letter from the PHMC.) The District Architectural Historian should put a note in the project file documenting the decision to proceed.

PennDOT may occasionally request an expedited review by the PHMC. The decision as to which projects receive expedited processing will be made by the PennDOT Cultural Resources Unit Chief. The review time will be mutually agreed upon by PennDOT and the PHMC on a case-by-case basis. When there is an emergency declared by the President or Governor, PennDOT and the PHMC will follow the *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Emergency Relief Program* (January 14, 2005) for federally-funded projects. (See **Chapter XIII**.)

NOTE: The review period for the PHMC may be superseded by the terms of the current FHWA/PennDOT/PHMC Interagency Funding Agreement. In addition, PennDOT may request expedited reviews. However, there are circumstances where the faster review period might not expedite the project. If a project has a consulting party, or, if a project has an effect and is expected to be controversial, there is a 30-day comment period for the public and consulting parties. In these instances, an expedited review from the SHPO should not be requested, since it will not expedite the completion of Section 106. In these instances, the SHPO should be given the full 30 days to comment, in particular to have an opportunity to see the comments of consulting parties.

B. ARCHAEOLOGY

1. Level of Effort

Consistent with 36 CFR 800.4, PennDOT will make a reasonable and good faith effort to identify archaeological resources within the APE. The level of effort will take into account the magnitude and nature of the project, prior studies completed in the vicinity of the project, the degree of federal involvement, and the nature and extent of potential effects to archaeological sites.

The District Archaeologist will determine whether further archaeological studies are needed to identify archaeological resources that may be within the project APE. This determination should be based on information gathered during early coordination efforts, including the scoping field

view and background research, along with their best professional judgment. The District Archaeologist may consult with the Cultural Resources Unit, FHWA, and/or the PHMC in determining the level of effort.

If the District Archaeologist determines that archeological studies are needed, he/she will prepare a scope of work. The scope of work may be included in the *Project Early Notification/Scoping Results Form* prepared after the scoping field view (*see Chapter III.A.6*) or may be a separate document. The scope of work should be provided to the PennDOT Project Manager and Environmental Manager.

2. Background Research

The objective of background research is to determine the level of information already available for archaeological sites within the APE, to determine the potential for as yet unidentified archaeological sites, and/or to form the basis for historic context development and NRHP eligibility evaluations. Background research is the first step in archaeological identification and evaluation. Background research may take one of two forms: overview research, or detailed research.

a. Overview Research

Overview research will generally be undertaken by the District Archaeologist during early coordination efforts (*see Chapter III*) to determine whether additional archaeological studies are needed. This research includes determining whether the APE was previously surveyed for archaeological sites and whether there are any identified archaeological sites within or adjacent to the APE. Generally, this information can be obtained electronically utilizing the CRGIS. Historic maps are also used to determine the potential for historic archaeological sites in the APE. Soil maps and the PennDOT Video Logs can be used to provide information on current land use. Ideally, overview research should be conducted prior to the field view.

b. Detailed Research

Detailed research will normally be done by a consultant when the District Archaeologist has recommended an archaeological survey of the APE, except in cases where archaeological testing may be completed in-house (*see Section B.6.a*). Before beginning archaeological testing, sufficient background research on the history and prehistory of the project area should have been completed to form a reasonable expectation for the likelihood that pre-contact and/or historic sites are present and where these sites are likely to be located.

The background research will assess the level of cultural resources work previously done in the project vicinity, and should enable the preparation of a context in which to evaluate sites that may be identified during archaeological testing. In addition to the CRGIS, detailed background research should include a review of relevant primary and secondary source materials including, but not limited to:

- Archaeological survey reports (PHMC ER files)
- Archival collections

- Soil maps
- Historic maps and atlases
- County and local histories
- Local information sources such as regional and local historical societies, libraries and other research facilities, and interviews with property owners and other informants, as appropriate
- Tribal consultation

Detailed background research will typically be summarized and presented as part of an Archaeological Predictive Model, a Phase I Archaeological Identification Report, or a combined Phase I and II Evaluation Report. In urban settings with potentially deep soils and a long history of land use, a separate Archaeology Sensitivity (Phase IA) Report on the results of the background research may be prepared. The purpose of the Archaeology Sensitivity Report is to document the history of land use and to determine the potential for significant archaeological remains. Often, archaeological testing in urban settings must be deferred until the right-of-way is acquired, and detailed background research early in project design should help to determine whether or not archaeological testing will be necessary.

The background research will enable the preparation of a historic context within which to evaluate any archaeological sites that may be found in the APE. Background information that has been prepared or synthesized for previous surveys conducted within the vicinity of a project should be utilized and referenced to the extent possible, rather than recreating the information and duplicating effort.

3. Disturbance Testing by PennDOT Archaeologist

The District Archaeologist, through the use of augers or shovels, may test the APE to verify or document disturbance. This may be done during the scoping field view or at a later time. The District Archaeologist should identify the limits of disturbance, both vertically and horizontally, within the APE. This will help to focus the archaeological testing if portions of the APE are undisturbed. If the entire APE is found to be disturbed, the District Archaeologist will prepare the [PHMC's Record of Disturbance Form](#) (*Chapter XII*). Alternatively, a geomorphologist may be used to confirm or document disturbance (see the next section regarding geomorphological investigations).

4. Geomorphological Investigation

The District Archaeologist will determine the need for geomorphological investigations on the basis of the scoping field view, background research, and the project's vertical APE (*see Chapter III*). Geomorphological investigations are most likely to be implemented in situations where soils are deep, such as alluvial, colluvial, or urban settings. A geomorphological study is a cost-effective method for assessing the potential for deeply buried archaeological sites, for documenting degree of disturbance, for documenting depositional processes, and recording archaeological site stratigraphy. It is preferable that the geomorphologist have some exposure to archaeology or experience working with archaeologists.

Initial geomorphological investigations must be completed prior to archaeological testing and should be used to develop the archaeological deep testing strategy. It is recommended that the principle investigator for the project and/or the District Archaeologist, if possible, be present when the geomorphologist is in the field. If hazardous materials are suspected within the area to be tested, the geomorphologist should wait until an Environmental Site Assessment is completed before beginning any excavation.

Using auger borings, trenches, or other means to examine soil profiles, the geomorphologist should determine the landform(s) on which the project is located; determine the soil type(s), stratigraphy, and age of the depositional events and soils; and determine the potential for intact archaeological deposits. The geomorphologist may also utilize data from engineering soil borings and should take into account any data derived from a Phase II geophysical study.

a. No Potential for Archaeological Resources

If the geomorphologist determines that there is no potential for archaeological resources, the geomorphologist will prepare a report for submission to the District Archaeologist. The report should include a map showing the location(s) of the borings or trenches, soil profiles that represent the range of variability within the APE, a description of the landform(s) and soils within the APE, soil formation processes, and a discussion on the age of the soils. See *Chapter XII* on documentation standards for a geomorphology report. The District Archaeologist will use the report to support his/her finding for the project.

b. Potential for Archaeological Resources

When the geomorphologist determines that there is potential for deeply buried archaeological sites, or when geomorphological studies are conducted as part of an archaeological site excavation, the geomorphologist will prepare a report that includes a map showing the location(s) of the borings or trenches, soil profiles that represent the range of variability within the APE, a description of the landform(s) and soils within the APE, soil formation processes, and a discussion on the age of the soils. This geomorphology report should be incorporated into the appropriate archaeology report. (See *Chapter XII* for documentation standards.)

5. Deferring Archaeological Testing

Under certain conditions, archaeological identification and evaluation field testing may be deferred until later in project design. Stipulation III.B.6.c of the Section 106 PA specifies the following situations where field testing may be deferred:

- On large or complex projects where multiple alternatives are under consideration;
- When access to property is restricted; or
- When the APE is not known until later in project development for items typically included as part of final design and permitting, such as the locations of bridge piers, storm water detention basins, or wetland mitigation sites.

When archaeological testing is deferred on the basis of at least one of these conditions, a Project Programmatic Agreement is no longer required for the NEPA document to be approved. The

Section 106 PA serves as the umbrella agreement that commits FHWA and PennDOT to complete the Section 106 process. The District Archaeologist will prepare the [*Deferral of Archaeological Testing Form*](#) indicating the reason for deferral and specifying the location(s) and level of archaeological and/or geomorphological testing to be completed at a later date. If an Archaeological Predictive Model, or an Archaeology Sensitivity Report is prepared (below), the report should be attached to the *Deferral of Archaeological Testing Form*. This information will be made available to the PHMC, FHWA, Bureau of Project Delivery Cultural Resources Unit, and any consulting Tribes/Nations according to the procedures in the ***Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals Document***. The form will be retained in the project files and will be attached to the appropriate NEPA environmental document, or for 100% state funded projects the Environmental Document (ED). The District Archaeologist will ensure that archaeological testing is completed prior to the project's approval for construction.

NOTE: If there will be an adverse effect to above ground historic properties and archaeological testing is deferred for one of the reasons cited above, a Project Programmatic Agreement, rather than a Deferral of Archaeological Testing form, should be prepared (see below).

a. Project Programmatic Agreement

A Project Programmatic Agreement will be required when archaeological testing will not be completed prior to approval of the NEPA document for reasons other than those cited above, or archaeological testing will be deferred **and** there will be an adverse effects to above ground historic properties. For example, if project schedule is the only reason for requesting approval of the NEPA document prior to completion of archaeological testing, a Project Programmatic Agreement will be required. The Project Programmatic Agreement will include any measures for mitigating adverse effects to historic properties, and appropriate stipulations for completing archaeological testing. This does not represent a change in current practice.

If a Project Programmatic Agreement will be prepared, the District CRP will consult with PHMC, FHWA, the Cultural Resources Unit, Tribes/Nations, or other consulting parties prior to requesting these parties to sign the Project Programmatic Agreement. Information that explains the project and the archaeological potential of the area may take various forms depending on the nature of the project and the existing ground conditions. Documentation could include an archaeological predictive model (below), a Phase IA sensitivity report (below), results of preliminary geomorphological testing or core borings (above), or other documentation that explains the proposed project and the archaeological sensitivity of the area. This information may be provided to the above parties with a draft Project Programmatic Agreement, or individually prior to requesting review of a draft Project Programmatic Agreement.

The review and signing of a Project Programmatic Agreement will follow the same procedures as Memoranda of Agreements in ***Chapter IX***. A sample Project Programmatic Agreement is included in ***Appendix 3***.

b. Archaeological Predictive Modeling – Large Projects

Predicting the probability and type of archaeological sites that may be present within a project's APE is part of any archaeological assessment; however, formal archaeological predictive models are often utilized on large (EIS or EA) projects with multiple alternatives. Because of the high cost associated with testing several alternatives, it is recommended that archaeological testing be deferred, per 36 CFR 800.4(b)(2), until an alternative has been selected. The archaeological predictive model is developed to provide information for the evaluation of project alternatives. Once an alternative has been selected, archaeological testing is conducted on the selected alternative using the predictive model as a guide. The predictive model must address both historic and prehistoric (pre-contact) archaeological resources.

A GIS-based predictive model is preferable, and the PHMC's CRGIS is a good tool. The CRGIS shows known site locations and will be sufficient for simple queries. For sophisticated predictive modeling a data download will be required and should be requested from the PHMC's GIS Section.

An Archaeological Predictive Model Report is to be prepared that explains the expectations of the model (See *Chapter XII* for documentation standards). The report will be reviewed by the District Archaeologist. The report will then be made available to the FHWA, the PHMC, the Cultural Resources Unit, Tribes/Nations consulting on the project, and other consulting parties through Project PATH. To the degree that known archaeological sites are identified by location in the report, the report will be posted on the IUP secure side server.

c. Archaeology Sensitivity Report (Phase IA)

Archaeology Sensitivity Reports are useful when the project is located in an urban area and access to property is restricted until after the NEPA document is approved. Urban settings often contain deeply buried soils and have a long history of land use. The purpose of the Archaeology Sensitivity Report is to document the land use history and determine the potential for significant archaeological remains.

The Sensitivity Report will contain detailed background research on the development of the property or properties within the APE. Field views, historic maps and other records will be used to reconstruct the land use history. The report will also include an assessment as to the likelihood that intact archaeological remains are present and, if high probability areas are identified, a proposed method of testing when access to property is gained. (See *Chapter XII* for documentation standards).

The Archaeology Sensitivity Report is to be reviewed by the District Archaeologist, and then made available to FHWA, PHMC, the Cultural Resources Unit, Tribes/Nations consulting on the project, and other consulting parties through Project PATH. To the degree that known archaeological sites are identified by location in the report, the report will be posted on the IUP secure side server.

d. Archaeological Monitoring

Archaeological monitoring is the stationing of an archaeologist on a construction site to watch for evidence of archaeological remains as the construction proceeds. If archaeological artifacts or features are identified by the monitor, construction must stop in the area of the discovery. Depending on the nature of the archaeological deposits, additional testing may be required and could result in project delays.

Archaeological monitoring is not a substitute for completing archaeological identification and/or evaluation testing prior to construction. Late discovery of archaeological sites usually forecloses options to avoid effects to the site(s). With the approval of FHWA, PHMC, and considering the views of consulting Tribes/Nations and other consulting parties, monitoring may be a solution on the rare occasion that archaeological testing is impossible prior to construction.

Alternatively, there may be instances when archaeological testing has been completed during preliminary or final design, but it is advisable for an archaeological monitor to be present during construction. An example would be if there is a high probability for human remains or graves.

In either case, when an archaeological monitor will be used, the construction contract should contain a provision that allows the contractor to stop work in the area of a discovery without either the contractor or PennDOT incurring penalties for stopping construction.

If archaeological sites are identified during monitoring, the District Archaeologist will follow the procedures for late discoveries in *Chapter XIII.C*.

6. Archaeological Identification (Phase I) and Evaluation (Phase II) Surveys

Archaeological Identification (Phase I) Surveys determine the presence or absence of archaeological sites within the project APE, and Evaluation (Phase II) Surveys assess the eligibility of any identified sites for the NRHP. Prior to beginning any field testing, background research must be completed (see *Section B.2*). Field work may start with either geomorphological or archaeological testing, as appropriate. All projects in alluvial or colluvial settings with deep soils must include a geomorphological assessment. If hazardous materials are suspected within the area to be tested, field testing should not begin until an Environmental Site Assessment is completed.

Unless archaeological testing has been deferred for reasons cited above, archaeological identification surveys should generally begin as early as possible in preliminary design, but not so early as to result in unnecessary field testing because of an ill-defined APE. Timely field work allows any archaeological resources that are identified to be fully considered in project planning.

a. Conducting Archaeological Surveys In-House

In most cases, the Phase I Archaeological Identification Survey will be completed by a consultant; however, on small projects the archaeological work may be accomplished by the District Archaeologist. The decision to conduct archaeological testing in-house will be made by the District Archaeologist in consultation with the Environmental Manager, and will be

determined by workload, size of APE, and/or other factors. The decision to do the work in-house should be guided by the following parameters.

- Scoping field views, preparation and/or review of project documentation, and consultation with PHMC, Tribes/Nations and other consulting parties should take precedence over field testing. In other words, project management has a higher priority than archaeological field work.
- The District Archaeologist should be able to complete the field testing within a day or two. Projects requiring more than two days of field work should be given to a consultant.
- When archaeological sites are identified by the District Archaeologist, the project should be turned over to a consultant to complete any additional phases of testing and reporting.

b. Archaeological Surveys by Consultants

When the Phase I Archaeological Identification Survey will be completed by a consultant, the District Archaeologist should be involved in reviewing the consultant's technical and price proposal. Prior to beginning field work the consultant should confirm the APE for the project with the District Archaeologist along with the level of testing needed to identify archaeological sites that may be present within the APE.

c. Archaeological Testing Methods

The most cost-effective means for conducting a Phase I Identification Survey is a walkover and controlled surface collection in plowed fields. When fields are in crop or otherwise cannot be plowed, or land use is other than in field, excavation of shovel test pits (STPs) is the standard method. Excavations that must extend deeper than 1 meter (3 feet) in order to reach required depths will necessitate larger excavation units (1m² or larger). All deep testing must comply with the Occupational Safety and Health Administration (OSHA) safety standards. Other less common methods that may be employed include excavation of shallow trenches in areas of suspected building foundations, or use of remote sensing equipment. If an archaeological predictive model has been developed for the project (as described above), the model should be used to guide the testing of the APE. Otherwise, testing should be consistent with *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23) and take into account the National Park Service's publication, *The Archaeological Survey: Methods and Uses* (1978:GPO stock #024-016-00091) and the *SHPO/PHMC Guidelines for Archaeological Investigations in Pennsylvania* (November 2008).

d. Results of Archaeological Identification Testing

When the Archaeological Identification field testing is complete, the consultant should inform the District Archaeologist of the results of the survey, preferably via a phone call or email. The District Archaeologist will discuss the results with the Project Manager and/or Environmental Manager. If archaeological sites are identified, the Project Manager and/or Environmental Manager will review the project to determine whether the project design has changed or would be changed such that the site would be avoided. If a site is located where the project design

involves placement of fill, a site may be effectively avoided through controlled preservation in-place (see **Chapter VIII.C.6**). However, the decision on whether to bury a site under fill requires careful consideration and consultation with stakeholders, and is best made after enough testing has been completed to identify the nature of the site, the materials it contains, and whether the site is determined eligible for the NRHP.

The District Archaeologist will follow, or direct the consultant to follow, one of the procedures below, as appropriate.

- *No Archaeological Sites Identified*

When no archaeological sites are identified in the APE, the District Archaeologist or consultant will document the results of the Identification Survey using the [PHMC's Negative Survey Form](#). See **Chapter XII** for documentation standards and **Chapter VIII** for preparing a determination of effect.

- *Archaeological Site(s) Identified, Avoided by Project*

When archaeological site(s) are identified but will be avoided by project activities, the District Archaeologist or consultant will prepare a report documenting the results of the Identification Survey and indicating the measures that will be taken to avoid the site(s). See **Chapter XII** for documentation standards and **Chapter VIII** for preparing a determination of effect. If protective measures will be taken to avoid impacting a site during construction, such as placement of fencing or geotextile and fill, these commitments must be included in the project plans and communicated to the construction contractor(s) through the Environmental Commitment and Mitigation Tracking System (ECMTS).

- *Archaeological Site(s) Identified, Affected by Project*

When archaeological site(s) are identified that may be affected by project activities, additional studies generally will be required to evaluate the site(s) for eligibility to the NRHP. Whenever possible, Archaeological Identification Surveys (Phase I) and Archaeological Evaluation Surveys (Phase II) should be combined into a single field effort. This results in a streamlined process and a quicker determination of whether eligible archaeological sites are present in the APE. Districts are encouraged to include a scope-of-work for Evaluation (Phase II) studies in the consultant's contract. The scope of archaeological work should be carefully considered to ensure it is appropriate and cost-effective (i.e. limited to project disturbance). This will allow completion of Identification and Evaluation studies preferably within a single field season without stopping work to wait for a contract supplement to be executed.

In some cases, it may not be possible or preferable to combine Identification and Evaluation. Examples may include large, complex projects, or when access to further archaeological testing is denied by the property owner.

When the Archaeological Identification and Evaluation studies are combined, the consultant should prepare a very brief synopsis (letter-type report or email) at the end of the Phase I field investigations that includes:

- a map of the locations tested
- interpretation of the soil stratigraphy
- the quantity and description of recovered artifacts, and
- recommendations for additional testing.

The letter report or email will be submitted to the District Archaeologist. The District Archaeologist will confer with the consultant in a field view, meeting, or conference call, as appropriate, to discuss the scope of work for site evaluation (Phase II). The level of effort for site evaluation should take into account the PHMC archaeology guidelines (2008), the nature of the site, and professional judgment. The level of testing must be enough to allow a determination of eligibility to be made with some degree of confidence. PHMC and consulting Tribes/Nations will be provided with a copy of the Phase I synopsis and will be invited to participate in the discussion. The District Archaeologist will then revise the consultant's scope of work accordingly and forward copies to the Project Manager or Environmental Manager. When the Evaluation (Phase II) field testing is completed, the consultant will prepare an Identification and Evaluation Report. See *Chapter XII* for documentation standards.

When Archaeological Identification and Evaluation efforts are not combined, the consultant will prepare a separate Phase I Identification Report, consistent with the PHMC guidelines and *Chapter XII*, on the results of the survey. The report will include recommendations for additional testing to evaluate the site(s) for the NRHP. Later, when evaluation studies have been completed, a separate Phase II Evaluation Report will be prepared. See *Chapter XII* for documentation standards.

7. Application of National Register Criteria

When archaeological sites are identified in the APE that may be affected by project activities, the sites must be evaluated for eligibility to the NRHP. Most archaeological sites in Pennsylvania are eligible under Criterion D, for their important information, although it is possible for a site to be eligible under another criterion as well. The National Register Bulletin *Guidelines for Evaluating and Registering Archaeological Properties* (Little, et al. 2000) should be used as a guide on how to evaluate archaeological sites for the National Register.

In evaluating a site for eligibility to the NRHP, the site must be placed within a historic context. Historic contexts organize information based upon themes, specific geographical areas, and chronological parameters.

The NRHP has identified five steps in creating a historic context:

1. Identify the concept, time period and geographic limits for the historic context;

2. Assemble existing information about the historic context;
3. Synthesize the information;
4. Define property types; and
5. Identify further information needs (Little et. al. 2000).

Under Criterion D, archaeological sites are eligible for listing in the NRHP if they can address significant research questions, and the data sets within the site have enough integrity to convey that significance. Each eligibility evaluation must provide a justification for why a site is either recommended eligible or not eligible. If a site is recommended eligible, the documentation must include the specific research questions the site is expected to answer. In order to pose specific research questions it is first necessary to summarize what is known archaeologically for the time period, theme, and/or region. The relevant questions address contradictions or gaps in that knowledge. It is not sufficient to state that a site will answer questions related to broad themes of “settlement pattern, trade, or subsistence”, for example. Important research questions are not equivalent to research themes. Under these broad themes the eligibility evaluation must address the specific research questions that the site could address and the gaps in knowledge that the information from the site could fill. For example, under the theme of subsistence, a site could be eligible because it has provided information on the earliest use of maize in Pennsylvania.

8. PennDOT Review of Identification and Evaluation Reports/Documentation

The District Archaeologist is responsible for reviewing consultant-prepared reports and documentation to ensure quality and consistency with the standards in *Chapter XII* and the PHMC Archaeology Guidelines. Unless otherwise directed, the consultant should submit a draft report or documentation to PennDOT in electronic format on a CD, or as an email file. The District Archaeologist may request revisions, as appropriate. When a report or documentation is prepared by the District Archaeologist, the Cultural Resources Unit may review it for quality assurance.

When the District Archaeologist agrees with the consultant’s recommendations, the District Archaeologist will use the report or documentation to support his/her determination of eligibility and/or finding of effect (see below and *Chapter VIII*). If the District Archaeologist disagrees with the consultant’s recommendations, the District Archaeologist will discuss the disagreement with the consultant. If the disagreement is not resolved, the District Archaeologist will prepare a statement on his/her finding including a justification for his/her position, and noting that the finding is different from the consultant recommendation. The District Archaeologist will incorporate this statement into his/her determination of eligibility and/or finding of effect, and will include the consultant’s report in the documentation (see below and *Chapter VIII*). The District Architectural Archaeologist is strongly encouraged to seek PHMC’s concurrence on eligibility findings that differ from the consultant’s recommendation, even when not required by the terms of the Section 106 PA.

9. Documentation of Determination of Eligibility and Consultation

Under the terms of the Section 106 PA, the PennDOT CRPs may make determinations of eligibility where archaeological sites have not previously been evaluated, and may recommend

site boundaries if they have not already been established. Determinations of eligibility for archaeology are often combined with the finding of effect into one document, either the Identification and Evaluation (Phase I and II) Report, or the Evaluation (Phase II) Report. The determination of eligibility is more likely to be a separate step on a large or complex project.

For projects where the NEPA document will be either a CE or EA, formal consultation with the PHMC on determinations of eligibility is required only when a project would have an adverse effect on archaeological sites (see *Chapter VIII* for consideration of Effects). When archaeological site(s) are identified but will not be affected by project activities, the information (e.g. PASS form, Identification Report) will be provided to the PHMC for the CRGIS, but PennDOT will not request concurrence on determinations of eligibility for the purposes of the project. Likewise, if the project would have No Adverse Effect because a site would be protected by geotextile and fill, fencing, or other protective measures during construction, PennDOT is not required to seek the PHMC's concurrence on eligibility. A copy of the Identification and/or Evaluation Report would be provided to PHMC for the CRGIS. When the District Archaeologist is not required to seek the PHMC's concurrence on a determination of eligibility, the District Archaeologist may still elect to formally or informally consult with the PHMC.

NOTE: It is critical to understand that when a project has an effect on historic resources, it is not possible to expedite the comment period for the effect finding through the SHPO comment period. Even if the SHPO expedites comments on a no adverse or adverse effect finding, the Section 106 Programmatic Agreement mandates that the public and consulting parties have 30 days to comment.

Consequently, project managers need to build adequate time into preliminary design schedules to allow for this comment period. Alternatively, project managers may accept a certain level of risk in moving forward with NEPA approval, specifically the potential for public or consulting party comments that must be addressed post-NEPA and which may entail a re-evaluation of the NEPA document. Where there have been no identified consulting parties, and where the project is non-controversial, this risk may be acceptable.

It is important to note that whether or not the District Archaeologist consults with the PHMC on a determination of eligibility, Tribes/Nations, and other consulting parties and the public must still be afforded an opportunity to provide information on historic properties that may be present within a project's APE. This effort should ideally be undertaken during background research. Tribes/Nations are also afforded the opportunity to agree or disagree with a determination of eligibility.

For projects where an EIS will be prepared or for other complex projects, consultation on the APE, identification, eligibility determinations, and assessment of effect are more often treated as separate steps in the process. Consultation with the PHMC will be required throughout the Section 106 process, regardless of the effect.

When the District Archaeologist seeks the PHMC's concurrence on a determination of eligibility as a separate step in the process, the District Archaeologist will prepare a letter to PHMC and attach either an Archaeological Identification and Evaluation (Phase I & II) Report or an

Archaeological Evaluation (Phase II) Report. Copies will be made available to FHWA, Cultural Resources Unit, Tribes/Nations, and consulting parties through the IUP secure side server, with e-mail notifications to consulting parties. If the determination of eligibility is combined with the determination of effect, the District Archaeologist will follow the procedures in *Chapter VIII*.

a. Review Period

Per 36 CFR 800.3(c)(4), the PHMC, Tribes/Nations, and consulting parties have 30 days to review and respond to a request for concurrence on determinations of eligibility made by PennDOT on behalf of the FHWA (or USACE). (The 30 day review period for the PHMC shall be superseded by the terms of the current FHWA/PennDOT/PHMC Interagency Funding Agreement.) If the PHMC, Tribe/Nation, or consulting party does not respond within the review period, PennDOT may proceed with the next step in the process. (For projects where the USACE is the lead agency, the District should check with the appropriate USACE District before proceeding. Some USACE Districts insist upon a response letter from the PHMC.) The District Archaeologist should put a note in the project file documenting the decision to proceed.

PennDOT may occasionally request an expedited review by the PHMC. The decision as to which projects receive expedited processing will be made by the PennDOT Bureau of Project Delivery Director. The review time will be mutually agreed upon by PennDOT and the PHMC on a case-by-case basis. When there is an emergency declared by the President or Governor, PennDOT and the PHMC will follow the *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Emergency Relief Program (January 14, 2005)* for federally-funded projects.

NOTE: The review period for the PHMC may be superseded by the terms of the current FHWA/PennDOT/PHMC Interagency Funding Agreement. In addition, PennDOT may request expedited reviews. However, there are circumstances where the faster review period might not expedite the project. If a project has a consulting party, or, if a project has an effect and is expected to be controversial, there is a 30-day comment period for the public and consulting parties. In these instances, an expedited review from the SHPO should not be requested, since it will not expedite the completion of Section 106. In these instances, the SHPO should be given the full 30 days to comment, in particular to have an opportunity to see the comments of consulting parties.

10. Curation of Artifacts and Records

When archaeological sites are identified in the APE, and upon acceptance of the Identification and/or Evaluation Report by PHMC, the consultant will prepare artifacts and records in accordance with the curation policy in *Chapter XIV*.

C. DISPUTE RESOLUTION

1. PHMC Objection on Level of Effort for Identification and/or Determinations of Eligibility

If the PHMC objects in writing within 30 days of the issuance of a determination of eligibility by PennDOT, and/or they object to the level of effort on identification of historic properties, with specified reasons for objecting, PennDOT will consult with PHMC to resolve the objection. If PHMC objects on the basis that the documentation accompanying the finding does not meet the standards of 36 CFR 800.11, PennDOT will make a reasonable effort to resolve the objection by providing further supporting information. This may mean conducting further research and/or identification efforts. The PennDOT CRPs may request the Cultural Resources Unit's participation in resolving the dispute. If PennDOT cannot resolve the objection of PHMC, the following steps should be taken depending on the lead federal agency (or if there is no lead federal agency):

FHWA is lead federal agency - unresolved PHMC objections: PennDOT will forward all documentation relevant to the dispute to FHWA, who will consider the objection and consult with the objector to resolve the objection. FHWA may direct PennDOT to conduct further research and/or identification efforts. If FHWA determines that the objection cannot be resolved, FHWA will take one of the following actions:

- Unresolved Objection by PHMC to Level of Identification Effort - FHWA may elect to involve the ACHP in determining if PennDOT conducted an appropriate level effort for identification. Alternatively, the PHMC may request the views of the ACHP. FHWA will consider the views of the ACHP and direct PennDOT accordingly.
- Unresolved PHMC Objections to a Determination of Eligibility - If PHMC continues to object to a determination of eligibility, FHWA will obtain a determination of eligibility from the Keeper of the National Register, whose determination shall be binding. Pursuant to 800.4(c)(2), the ACHP may require FHWA to obtain a determination of eligibility from the Keeper.

USACE or Other Federal Agency is Lead Federal Agency - Unresolved PHMC Objections: If PennDOT cannot resolve the objection of PHMC, and the project involves a lead federal agency other than the FHWA, PennDOT will forward all documentation relevant to the dispute to the federal agency who will determine a course of action.

State History Code Only Projects - Unresolved PHMC Objections: If PennDOT cannot resolve the objection of PHMC on a determination of eligibility, and the project is not subject to Section 106, PHMC or PennDOT may request a determination of eligibility from the Keeper of the NRHP, whose determination shall be binding. If the unresolved PHMC objection relates to an issue other than eligibility determinations, the District CRP will consult with PennDOT Central Office, including the Office of Chief Counsel, if necessary. If the objection cannot be resolved, PennDOT, through its office of Chief Counsel, and PHMC will submit the dispute to the Office of General Counsel for final resolution.

2. Tribe/Nation, Public or Consulting Party Objection on Level of Effort and/or Determinations of Eligibility

If a Tribe/Nation, member of the public, or consulting party objects in writing within 30 days of the issuance of any finding of eligibility by PennDOT, and/or with level of effort for conducting identification of historic properties, with specified reasons for objecting, PennDOT will consult with the objecting party and will take their comments into consideration in determining if additional research and/or documentation is warranted by the nature of the project and anticipated nature of effects. He/she will involve the PHMC in this consultation as warranted and/or requested by PHMC and/or the objecting party. He/she will also inform the objecting party of what actions, if any, will be taken. If, after this coordination, the objections cannot be resolved, the following steps should be taken depending on the lead federal agency (or if there is no lead federal agency):

FHWA is Lead Federal Agency - Unresolved Tribe/Nation/Public/Consulting Party

Objections: If PennDOT cannot resolve the objection of a Tribe/Nation, the public or consulting party, even where PHMC agrees, and the project involves FHWA as the lead federal agency, PennDOT will forward all documentation relevant to the dispute to FHWA. FHWA may direct PennDOT to conduct further research and/or identification efforts. If FHWA determines that the objection cannot be resolved, FHWA will take one of the following actions:

- *Unresolved Objection by Tribe/Nation/Public/Consulting Party to Level of Identification Effort (where PHMC concurs on level of identification effort) - FHWA may elect to consult with the ACHP in determining if PennDOT conducted an appropriate level of identification effort. FHWA will consider the views of the ACHP and direct PennDOT accordingly. Alternatively, FHWA may consider the views of the public without involvement of the ACHP. However, Tribes/Nations and other consulting parties, pursuant to 36 CFR 800.11(a) have the right to ask ACHP to review any dispute over whether documentation standards are met. In this case, FHWA will consider the views of the ACHP.*
- *Unresolved Tribe/Nation/Public/Consulting Party Objections to a Determination of Eligibility - When a Tribe/Nation, the public, or another consulting party disagrees on an eligibility determination that FHWA and PHMC agree on, FHWA will consider any additional information relayed by the objector that would cause them to reconsider an eligibility finding. FHWA may elect to obtain a determination of eligibility from the Keeper. The Keeper's determination of eligibility will be final and binding. If FHWA elects not to seek a determination of eligibility from the Keeper, the Tribe/Nation may request the ACHP to review the dispute. The ACHP can offer its views to the agency official and the Tribe/Nation, or the ACHP can require the FHWA to obtain a determination of eligibility from the Keeper. All information provided to the Keeper by any party shall be shared with all agencies involved and with the consulting parties.*

USACE, or Other Federal Agency is Lead Federal Agency-Unresolved Tribe/Nation/Public/Consulting Party Objections: If PennDOT cannot resolve the objection of a Tribe/Nation, the public, or consulting party, and the project involves a lead federal agency other than FHWA,

PennDOT will forward all documentation relevant to the dispute to the federal agency who will determine a course of action.

State History Code Only Projects - Unresolved Tribe/Nation/Public or Consulting Party

Objections: If PennDOT cannot resolve the objection of a Tribe/Nation, the public, or a consulting party on a determination of eligibility -where PHMC agrees with the PennDOT determination- and the project is not subject to Section 106, the objecting party may submit a NRHP nomination to PHMC. That nomination will be reviewed by the PHMC Board prior to submission to the Keeper of the National Register for a determination by the Keeper. The determination of the Keeper will be binding. Alternatively, either PennDOT or PHMC may request a determination of eligibility from the Keeper of the National Register.

If the unresolved Tribe/Nation, public, or consulting party objection relates to level of identification effort, and PHMC has concurred with the level of identification effort, PennDOT is under no further obligation.

Disagreement with Finding After the End of the Review Period

If PHMC, Tribe/Nation, or a consulting party responds after the end of the review period, PennDOT is not obliged to reconsider the eligibility determination, per 36 CFR 800.3(c)(4). However, the District CRP will discuss the response with the Project Manager or Environmental Manager, as appropriate, and recommend a course of action. The decision will be documented in the project file.

VIII. DETERMINATION OF EFFECTS

A. GENERAL GUIDANCE

When there are eligible historic properties within the Area of Potential Effect (APE), the effects of the project on these properties must be assessed. Determining a project's effects follows a two-step process.

1. Determine if the Project will Affect Historic Properties

A determination is made whether the project will have an effect on historic properties. A project is considered to have an effect when the characteristics of the property qualifying it for inclusion in the National Register of Historic Places (NRHP) are altered (36 CFR 800.16(I)). If there are no historic properties present or there are historic properties present, but the project will have no effect upon them, PennDOT will make a finding of "No Historic Properties Affected." The project development process must include an effort to seek to avoid effects where possible; where avoidance is not possible, effort must be made to minimize effects to historic properties.

2. Apply Criteria of Adverse Effect for Affected Historic Properties

If it is found that historic properties are affected, then the Criteria of Adverse Effect as discussed in 36 CFR 800.5(a)(1) must be applied. The outcome will either be a determination of No Adverse Effect or Adverse Effect. An adverse effect exists when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, setting, materials, workmanship, feeling, or association. These effects include those that may occur later in time but are foreseeable. When a project alternative is found to result in an adverse effect, effort must be made to determine if avoidance of the adverse effect can be made. If avoidance is not possible effort must be made to determine if effects can be minimized.

It is important to note that although the effect of the project will be assessed on each individually eligible property within the APE, and archaeological findings will be posted or submitted to the Pennsylvania Historical and Museum Commission (PHMC) separately from above ground historic property findings, the project will have only one effect finding that considers all historic properties. For example, if the project will have No Adverse Effect on three above ground properties and an Adverse Effect on an eligible archaeological site, the effect determination for the project is an Adverse Effect.

3. Assessing Project Effects Under the State History Code

For the sake of consistency and simplicity of operation, the findings of "No Historic Properties Affected", "No Adverse Effect" and "Adverse Effect" are utilized whether or not the project is subject to Section 106. While this terminology is specific to the regulations implementing Section 106, the terminology and guidance in this section should also be used for projects subject only to the State History Code, except where noted.

For state funded projects where there is a US Army Corps of Engineers (USACE) permit, the USACE is the lead agency, and Section 106 applies. PennDOT must consult with the USACE when property(ies) are adversely effected; a determination must be made as to whether affected properties are within or outside the USACE Permit Area.

If the project is 100% state funded without a USACE permit, neither the Federal Highway Administration (FHWA) nor the USACE will be involved in consultation.

B. DETERMINATION OF EFFECT FOR ABOVE GROUND HISTORIC PROPERTIES

There are three possible outcomes in determining the effect a project has on historic properties: No Historic Properties Affected; No Adverse Effect; or, Adverse Effect.

1. No Historic Properties Affected

a. No Historic Properties Affected Because No Historic Properties Present

During the scoping field view the District Architectural Historian may find that there are no properties over 50 years old in the APE. Alternatively, the District Architectural Historian may find that none of the 50+ year old properties in the APE would meet NRHP Criteria. If either is the case, and the project is not an exempt activity, the District Architectural Historian may issue a finding of No Historic Properties Affected for above ground properties immediately following a field view by completing the [*Above Ground Historic Properties Field Assessment and Finding Form*](#). The form must document how this conclusion was reached, and the explanation must meet the standards of 36 CFR 800.11. There is no requirement to complete Pennsylvania Historic Resource Survey (PHRS) short forms; however, if any short forms are completed they should be attached to the *Above Ground Historic Properties Field Assessment and Finding Form* with a notation that the forms are for the Cultural Resource Geographic Information System (CRGIS) (file) only.

b. No Historic Properties Affected After Application of the Definition of Effect

During the scoping field view the District Architectural Historian may find that there are properties that need to be assessed for eligibility through completion of PHRS form(s). If, following receipt of completed PHRS form(s), the District Architectural Historian finds that there are one or more properties within the APE that meet one or more NRHP criteria, he/she will determine if the project will cause effects; meaning altering the characteristics that qualify it for inclusion in the National Register. If the District Architectural Historian determines that the project will not have an effect, he/she will issue a finding of No Historic Properties Affected for above ground properties through completion of an *Above Ground Historic Properties Field Assessment and Finding Form*. If he/she determines that the project will have an effect, he/she will apply the criteria of adverse effect (see **Section B.2** below). An “Effect Report” can be produced to support the finding but is usually not necessary for projects that result in a finding of No Historic Properties Affected.

c. Posting of Finding and Consultation Requirements

The *Above Ground Historic Properties Field Assessment and Finding Form* must document how the No Historic Properties Affected determination was reached; the explanation must meet the standards of 36 CFR 800.11. Any reports, such as an Effect Report or PHRS forms completed pursuant to a determination of No Historic Properties Affected should be attached to the finding with indication that the PHRS forms are for the CRGIS (file) only.

The District Architectural Historian may elect to complete the effects determination and coordination separate from the identification and eligibility process. In this case, the District Architectural Historian would submit (if he/she seeks PHMC concurrence on the finding), or post (if PHMC concurrence on effect is not sought), the finding of effect separately. Alternatively, a combined Eligibility and Effect Report may be called for based on the nature of the project. Completion of a combined report would be at the discretion of the District Architectural Historian.

If the District Archaeologist has already made a determination of effect for archaeological properties, the District Architectural Historian will be making the overall effect determination for the project.

The finding, including associated reports or other supporting documentation, will be made available to the FHWA, PHMC, consulting parties, and the public through Project PATH (see *Section E* below for more information on consultation requirements).

2. No Adverse Effect and Adverse Effect

a. Determining Effects

If the Architectural Historian concludes that a project will have an effect, he/she will apply the criteria of adverse effect, found at 36 CFR 800.5, to the property/properties. If the conclusion is that the effects are not adverse, he/she will propose a finding of No Adverse Effect for above ground properties. If the Architectural Historian determines that the effects are adverse, he/she will make a finding of Adverse Effect for above ground properties. In either case, the CRP should work with the project team throughout the project development process to determine if the project can be modified to, or an alternative selected that would, avoid effects to historic properties. If avoidance is not possible, the CRP should work with the project team to see if the project can be designed or modified to minimize effects.

b. Posting of Finding

The *Above Ground Historic Properties Field Assessment and Finding Form* can be used to document findings, including findings of eligibility and effect, with sufficient documentation to support the finding, pursuant to 36 CFR 800.11(e). Where feasible, the body of the form can be utilized to provide the justification; alternatively an Effect Report or effect tables may be attached as supporting documentation (See *Chapter XII* for report standards). PHRS forms for eligible properties should be attached, and the CRP will seek the concurrence of PHMC on these determinations of eligibility. A combined Eligibility and Effect Report may also be called for,

depending on the nature of the project. Completion of a combined report would be at the discretion of the District Architectural Historian.

Alternatively, the District Architectural Historian may elect to complete identification and coordinate eligibility with PHMC as a separate step. If eligibility is coordinated as a separate step, the finding of effect may still be posted on the *Above Ground Historic Properties Field Assessment and Finding Form* with reference to previous coordination on eligibility.

Findings, and associated reports, will be posted for public, FHWA, PHMC, and consulting party viewing in Project PATH. (See **Section E** below for information on consultation requirements.)

PennDOT will consider any concerns, comments or information provided by the public or consulting parties received within the 30-day comment period. PennDOT will also consider any concerns, comments or information provided by the PHMC within the review period allowed by the interagency funding agreement (see **Section E** below for more information on review periods). Pursuant to 36 CFR 800.6(a), PennDOT must consult with PHMC and other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects (see **Section E** below for more information on consultation and review periods).

3. Effects to National Register Eligible or Listed Bridges or Bridges Contributing to a National Register Eligible or Listed Historic District

Projects involving the potential replacement of a National Register eligible or listed bridge, or a bridge that is determined to be a contributing element to a National Register eligible or listed historic district, warrant the consideration of a rehabilitation alternative, regardless of how the bridge was programmed on the Ten Year Program (TYP)/Transportation Improvement Program (TIP). The project purpose and need statement must not preclude an outcome (i.e. the project purpose and need statement must not provide indication that the only way to achieve the purpose and need is to replace the bridge) or PennDOT will not be in compliance with the regulations which require the evaluation of alternatives or modifications to the undertaking that could avoid or minimize effects to the bridge.

Completion and submission to PHMC, consulting parties, and the public of a Determination of Effect Report which merely outlines that removing an eligible/listed bridge constitutes an adverse effect is not in and of itself sufficient consultation to resolve adverse effects. Because Determination of Effect Reports are generally produced to meet the requirements of 36 CFR 800.11 and should include the views of the public and consulting parties on the determinations, there must be opportunity to acquire and consider the views of the public and consulting parties on the potential effects prior to completion of a Determination of Effect Report. The regulations also require consultation to find ways to avoid or minimize effects.

Therefore, for projects involving the potential replacement of a National Register eligible, contributing or listed bridge, it is *recommended* that a rehabilitation feasibility analysis, also sometimes referred to as a rehabilitation case study, be conducted. The feasibility analysis can utilize the documentation being produced, or already produced, for the Section 4(f) Evaluation (when the project involves the potential replacement of an eligible or listed bridge) to

demonstrate whether it is prudent or feasible to rehabilitate the bridge and meet the purpose and needs of the project. Not all historic bridges require that this analysis be in the form of a report—in some cases the analysis may be a statement. The decision on whether or not a “report” is needed will be based upon the needs and circumstances of the project. The CRP will decide the level of effort required.

NOTE: Regarding federal-aid funding of projects involving historic bridges, Section 144(o) of Title 23 U.S.C. entitled “Historic Bridge Program” provides for the reasonable costs associated with preserving historic bridges. Specifically Section 144(o) states: “Reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the historic integrity of historic bridges shall be eligible as reimbursable project costs under this title (including this section) if the load capacity and safety features of the bridge are adequate to serve the intended use for the life of the bridge.”

The CRPs are encouraged to work with the project team on the feasibility analysis in consideration of the flexibility allowed by AASHTO, FHWA, and PennDOT in determining whether or not the bridge can be rehabilitated to “adequately serve the intended use for the life of the bridge”. An approach for determining the feasibility of rehabilitation is outlined in the March 2007 AASHTO publication, *Guidelines for Historic Bridge Rehabilitation and Replacement* to assist in reaching this determination. Additional guidance can be found in AASHTO’s *Guidelines for Geometric Design of Very Low Volume Local Roads* with local bridges with an average daily traffic (ADT) count of less than 400.

A successful feasibility analysis will provide a thorough investigation of rehabilitation as an alternative and prove that it either is, or is not, prudent and feasible according to project purpose and needs. See *Chapter XII* for a checklist and outline for necessary report components, to the degree that the CRP requires the analysis in report format.

NOTE: A Feasibility Analysis is **not** an Alternatives Analysis. It is **not** necessary, and usually undesirable, to include all alternatives under consideration; the report should only include the alternative(s) that would involve the rehabilitation of the bridge except where such additional information is requested by the CRP.

C. DETERMINATION OF EFFECTS FOR ARCHAEOLOGICAL PROPERTIES

There are three possible outcomes in determining the effect a project has on archaeological properties: No Historic Properties Affected; No Adverse Effect; or, Adverse Effect. When archaeological sites are present in the APE the assessment and documentation of effects is often combined with the determination of eligibility but may be a separate step on large or complex projects (See *Chapter VII*).

When an eligible archaeological site is identified within the project APE, the District Archaeologist will consult with the Project Manager or Environmental Manager to determine whether the site can be avoided if impacts to the site are anticipated. A site may be avoided

through project redesign so that the site is no longer within the APE, or through protective measures such as use of geotextile and fill in temporary construction areas. In areas of the project where permanent fill will be emplaced, site preservation-in-place may be considered (see **Section C.8** below). Direct impacts to an eligible archaeological site is an adverse effect, therefore the project design should avoid these sites whenever possible. When avoidance of an archaeological site is not possible, project designers should seek to reduce impacts by applying minimization measures.

1. No Historic Properties Affected

The District Archaeologist will make a finding of No Historic Properties Affected for archaeological properties when

- No archaeological sites are identified within the APE;
- There are archaeological sites within the APE that are determined not eligible for the National Register, or;
- A project is redesigned so that an eligible archaeological site is no longer within the APE.

The District Archaeologist will prepare the [*Archaeology Field Assessment and Finding Form*](#) and attach one or more of the following documents, as appropriate: a Geomorphology Report, Archaeology Sensitivity Report, PHMC's [*Record of Disturbance Form*](#), PHMC's [*Negative Survey Form*](#), or Archaeological Identification, and/or Evaluation Report. If the District Architectural Historian has already made a determination of effect for above ground historic properties, the District Archaeologist will make the overall effect determination for the project. The District Archaeologist will send a notice to FHWA, PHMC, Tribes/Nations, and consulting parties that a finding has been made, and the finding will be posted for public viewing on Project PATH. Consistent with the terms of the Section 106 PA, PennDOT is not required to ask PHMC's concurrence with the finding of No Historic Properties Affected (see **Section E** below). A paper copy of any archaeology report will be sent to PHMC for archival purposes.

2. No Adverse Effect

The District Archaeologist will propose a finding of No Adverse Effect if an archaeological site can be effectively avoided or protected by means of fencing, use of geotextile and fill, or other measures, but otherwise could have been adversely effected by project activities. The District Archaeologist will prepare the *Archaeology Field Assessment and Finding Form* and attach the Archaeology Identification Report, or the combined Identification and Evaluation Report, as appropriate. The measures to avoid adversely affecting the archaeological site must be included in the documentation. Although a soil compaction analysis does not need to be submitted to PHMC when geotextile and fill will be used in temporary construction areas, the Project Manager should ensure that an analysis is completed to determine how much fill will be required to protect any archaeological site(s) that may be present. (See **Section C.4**, below.)

The District Archaeologist will send a notice to FHWA, PHMC, Tribes/Nations, and consulting parties that a finding has been made, and will post the finding for public viewing in Project PATH. The location of the archaeological site(s) in question will be kept confidential; only a synopsis of the archaeological report will be provided on Project PATH. The full archaeological report will be posted on the IUP secure server, with links provided to consulting parties on a need-to-know basis. A paper copy of the Archaeology Report will be sent to PHMC for archival purposes. If the District Architectural Historian has already made a determination of effect for above ground historic properties, the District Archaeologist will make the overall determination of effect for the project. See *Section E* below for information on consultation requirements for findings of No Adverse Effect.

3. Adverse Effect

The District Archaeologist will make a finding of Adverse Effect when an eligible archaeological site cannot be avoided and will be impacted by project activities. The District Archaeologist will enter into consultation with FHWA, PHMC, consulting Tribes/Nations, and other consulting parties, as appropriate, to resolve the adverse effects. As a streamlining measure, the finding of Adverse Effect for archaeology is often combined with eligibility in the Evaluation (Phase II) Report or the Identification and Evaluation (Phase I & II) Report. It has also been the practice to include a mitigation plan in these reports. As an initial step in resolving adverse effects, a draft mitigation plan may continue to be included in the Identification and Evaluation Report, or may be prepared as a separate document. The draft mitigation plan should be the basis for discussion/consultation among the parties on the resolution of adverse effects.

4. Use of Geotextile and Fill - Standard Treatment in Temporary Construction Areas

Geotextile and fill may be used to protect temporary construction areas when these locations are determined to have a high probability for archaeological sites or an archaeological site has been identified. No archaeological testing is necessary prior to placing the geotextile and fill, however there are certain requirements that must be followed during installation and removal in order to avoid damaging any archaeological sites that may be present. Using geotextile and fill in temporary construction areas is considered to be a standard treatment; the specifications for its use are explained in *Chapter X.B*. No consultation with PHMC is required on the decision to use geotextile and fill; however, use of the standard treatment must be documented in the project effect finding and tracked as a NEPA mitigation commitment.

If geotextile and fill is used to protect an archaeological site that would otherwise be adversely affected by the project, the project will have No Adverse Effect on the site. If geotextile and fill is used in a high probability area in lieu of identification surveys, then the project will have a finding of No Historic Properties Affected.

5. Staging, Borrow, and Waste Areas

Locations of equipment staging during construction, as well as borrow and waste areas are considered to be part of the project APE under Section 106 where designated by PennDOT. For the most part in Pennsylvania these locations are determined by the contractor. Unless

PennDOT designates borrow, waste, and/or staging areas, the contractor is responsible for consulting with PHMC on potential effects. Coordination with PHMC by the contractor would typically be done as part of the NPDES permit process or if a USACE permit is required. When the District Archaeologist is aware of archaeological sites or archaeologically sensitive areas adjacent to the project APE, these locations should be marked on project plans as off limits to the contractor for borrow, waste, or staging. PennDOT may also approve certain locations for staging areas if they are protected with geotextile and fill.

6. Preservation in Place

Preservation in-place (also referred to as site burial or site encapsulation) is a viable treatment for avoiding transportation-caused adverse effects to NRHP-eligible or listed archaeological deposits. Its implementation involves careful planning and it is not an appropriate preservation methodology for every site or situation. It is best regarded as one of a substantial suite of management tools available to resource managers to help avoid, minimize, and/or mitigate adverse effects to archaeological sites.

There are four basic steps to preservation in place. First, permanent benchmark data is established and recorded, and markers are set in place before a site can be buried. This is to ensure that the site's provenience and boundaries are well recorded and will not be lost. Then, a buffer lens of geotextile or culturally sterile sand, gravel, clay, or other material is placed over the site. This separates the site matrix from the fill soil, which is added next. Finally, a plan for long term monitoring of the buried site must be developed and implemented.

The methodology and guidance for the appropriate application of preservation in place is largely derived from National Park Service Preservation Briefs developed in cooperation with the USACE, the Tennessee Valley Authority, and the University of Mississippi, and can be found at <http://www.nps.gov/history/seac/stabil-clearinghouse.htm>. Most directly applicable is Preservation Brief # 5, <http://www.nps.gov/archeology/PUBS/TECHBR/tch5.htm>.

The decision to develop and implement a preservation in place plan for an archaeological site that may be affected by a PennDOT project is summarized in *Figure VIII-1* below. Following the initial step of accurately defining an APE, and assuming the APE in question has the potential to contain NRHP-eligible or listed archaeological deposits (site), core borings or pre-identification level geomorphological analysis should establish the presence or absence of fill atop some or the entire APE. If 18 inches (approximately 50 cm) or more of fill material is already present atop the original land surface within the APE, and if direct project-related impacts are not expected to extend beneath that fill, the area is a candidate for preservation in place.

If fill is not present atop the potential site area, or if project impacts are expected beneath the fill layer, an effort should be made to identify archaeological deposits in the APE, and evaluate their eligibility for the NRHP. If an eligible site is found, and an avoidance alternative cannot be developed for it, the site should be evaluated for its candidacy for preservation in place as one of the available options to avoid or mitigate adverse effects. Those options also include traditional data recovery excavations for Criterion D eligible sites, and alternative mitigation efforts such as synthetic studies, contributions to a mitigation bank, or other kinds of protective or mitigation

measures developed by resource managers, consulting parties, or the public. The goal is to identify the protective or mitigation strategy that presents the best management option in terms of resource stewardship, costs, and efficiency.

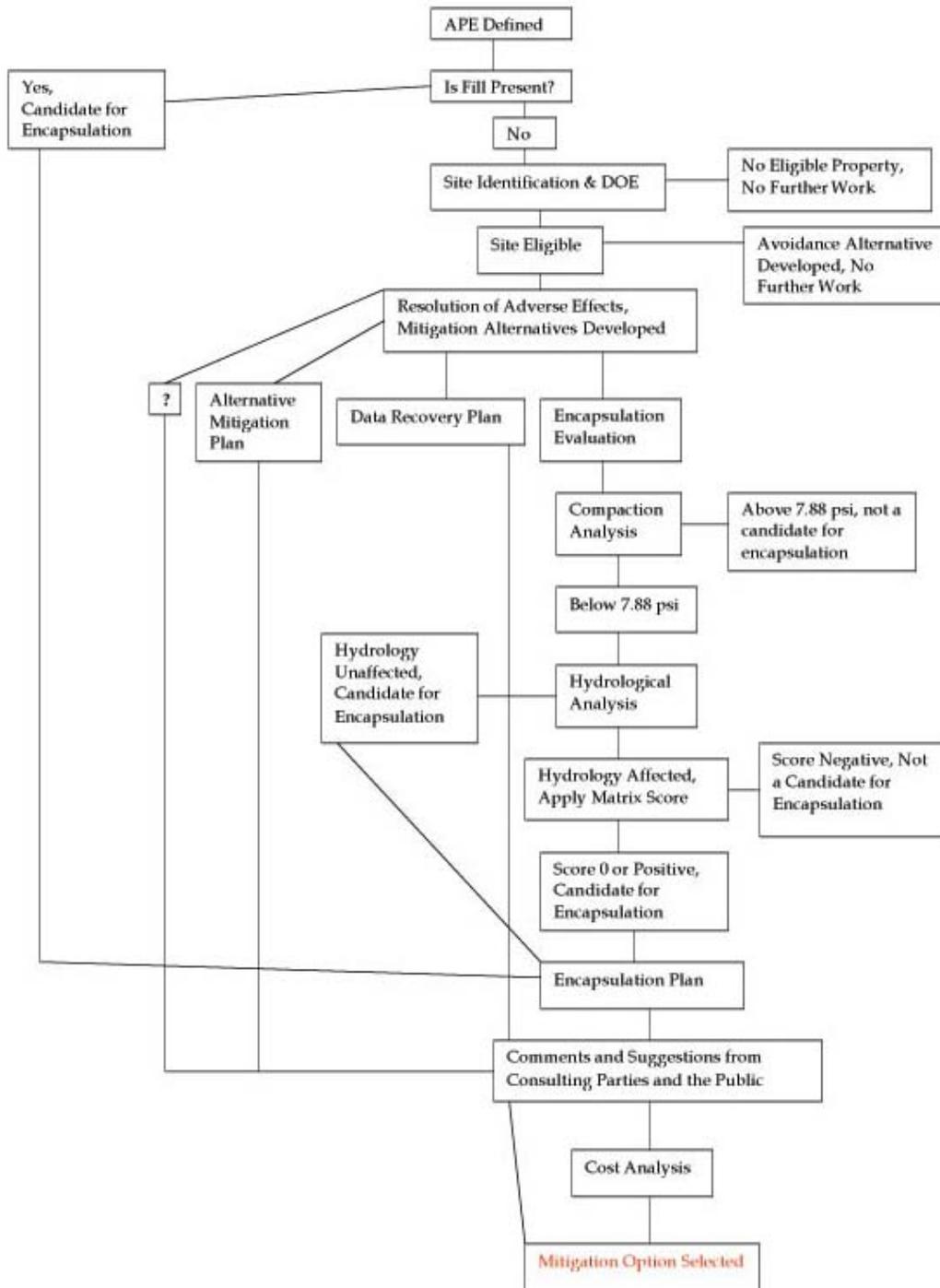


Figure VIII-1: Decision Tree, Archaeological Preservation in Place

Evaluation of the site’s candidacy for preservation in place begins with a compaction analysis of the site surface. If the analysis indicates that the site surface beneath its protective cap of geotextile and fill will be subjected to less than 7.88 pounds per square inch (psi) of pressure during construction and subsequent use of the facility, the site may be a candidate for preservation in place.

Following compaction analysis, the potential for the construction to alter the soil hydrology (i.e. make the site more or less wet than it is pre-construction) should be evaluated. Hydrological changes could result in the site area becoming permanently drier, going through more frequent cycles of drying and saturation, or becoming permanently saturated under either aerobic or anaerobic conditions. If there is no potential for hydrological effects, the site is a candidate for preservation in place. If the hydrology will be affected, a consideration of the potential effects of those changes can be quantified through numerical scoring of the site’s contents within the matrix shown in *Table VIII-1* below. This matrix, developed from guidance in Preservation Brief #5 and attributed to Dr. Christopher Mathewson at Texas A&M, evaluates the potential effects of changes in soil moisture to various artifact and ecofact types and features. If the score is negative, the site and its contents would likely be damaged by an attempt to preserve it in place, and it is not a good candidate. If the score is 0 or higher, it is a candidate for encapsulation.

Table VIII-1. Encapsulation Decision-Making Matrix							
	SITE COMPONENTS						
Hydrological Setting	Animal Bones	Shell	Plants	Charcoal	Crystalline Lithics	Granular Lithics	Ceramics
Dry (Cont.)	1	1	1	1	0	1	0
Wet Anaerobic (Cont.)	1	1	1	-1	-1	-1	-1
Wet-Dry	-1	-1	-1	-1	-1	-1	-1
Wet Aerobic	-1	-1	-1	-1	0	-1	-1
	Archeo Features	Soil Attributes	Metals	Context	Isotope Content	Topography	
Dry (Cont.)	0	0	1	0	1	0	
Wet Anaerobic (Cont.)	-1	-1	-1	0	-1	-1	
Wet-Dry	-1	-1	-1	0	-1	-1	
Wet Aerobic	-1	-1	-1	0	-1	0	
1=Enhances Preservation -1=Accelerates Decay 0=Neutral or No Effect							

If the site under consideration proves to be a candidate for preservation in place, and PennDOT wants to consider that option, an encapsulation plan should be developed. The plan should include:

- A plan view with horizontal boundaries of the site area to be covered
- A cross-section profile of the protective covering/geotextile and the emplaced fill
- A verbal description of the methodology to be employed in the burial of the site, including measures to protect the site from inadvertent damage during fill emplacement
- The long-term monitoring plan for the buried site
- Anticipated costs

The encapsulation plan, along with any other proposed mitigation, avoidance, or protective measures proposed for the site should be developed in consultation with the public and with any consulting parties with an interest in the project. All proposed mitigation, avoidance, and protective measures, including the encapsulation plan, should be evaluated for cost efficiency. As stated above, the goal is to choose the protective, avoidance, or mitigation strategy that presents the best management option in terms of resource stewardship, costs, and efficiency.

D. JOINT ABOVE-GROUND AND ARCHAEOLOGICAL EFFECT FINDING

The previous discussion of determination of effects for above-ground and archaeological resources in Sections B and C presume that the cultural resources professionals will be submitting their findings and documentation separately. In many instances, it will be possible for the above-ground and archaeological findings to be submitted concurrently. A [*PennDOT Section 106 Field Assessments and Finding Form*](#) has been created to allow an efficient joint finding. The joint finding form has three parts: a cover sheet summarizing project information, project description, above-ground, archaeological, and project effect, signatures, and a PHMC concurrence line; Archaeological Attachment A; and, Above-Ground Resources Attachment B.

This Form can be flexibly used to submit the completed project effect finding, or partial effect findings for either above-ground resources or archaeological resources. This Form may substitute for the *Above Ground Historic Properties Field Assessment and Finding Form* and the *Archaeology Field Assessment and Finding Form* cited in Sections B and C above. As with the other forms, the *PennDOT Section 106 Field Assessments and Finding Form* must document the effects conclusions and as warranted have supporting eligibility documentation attached.

E. CONSULTATION ON DETERMINATION OF EFFECT

The CRPs will make findings available for review and comment by PHMC, consulting parties, and the public through Project PATH.

1. Consultation with PHMC

a. No Effect

Under the terms of the Section 106 PA, PHMC has adopted a monitoring role for projects with No Effect to historic properties and for routine No Adverse Effect findings, rather than a project-by-project review. PennDOT is not required to seek PHMC concurrence on Findings of No Historic Properties Affected. Therefore there will be no clock or waiting time for a response from PHMC. PHMC may elect to review and comment on any project.

Once the finding is made, the Section 106 process is considered completed and a NEPA document may be approved. However, if the PHMC or other signatory party to the Section 106 PA, or consulting party on the project (possible, but unlikely) objects to the finding within 30 days, under Dispute Resolution Clause XI, PennDOT must consult to resolve the objection.

As a risk management decision, it is recommended (but not required) that the NEPA document not be approved until 30 days after the finding is made public. That decision to wait 30 days should be guided by the whether the project has consulting parties already involved, and the local sensitivity to historic preservation issues. Project managers should ensure time in their schedules to allow for a potential comment period, as warranted.

b. No Adverse Effect

Pursuant to Section III.B.9 of the Section 106 PA, the PennDOT CRP is not required to seek the concurrence of PHMC on findings of No Adverse Effect except under the following circumstances:

- Rehabilitation projects where the finding of No Adverse Effect is based upon the proposed work being consistent with the Secretary of the Interior's Standards for Rehabilitation;
- Where there is public controversy on historic preservation issue;
- *At the request of the CRP;
- At the request of FHWA, a Tribe/Nation, or a consulting party.

<p>NOTE: The CRP may elect to consult with PHMC and seek their concurrence on a finding of No Adverse Effect, and/or to seek their input on ways to avoid effects, if they feel it is necessary and/or desirable.</p>

c. Adverse Effects

Pursuant to Section III.B.9 of the Section 106 PA, the PennDOT CRP is required to seek the concurrence of PHMC on findings of Adverse Effect and discuss options that would avoid or minimize adverse effects. If an adverse effect cannot be avoided the CRP should seek PHMC's agreement not only that the project constitutes an adverse effect, but also that the adverse effect cannot be avoided.

Refer to *Section F* below for information concerning resolving disputes when PHMC notifies PennDOT that it disagrees with the finding of effect, or feels PennDOT made insufficient efforts to seek ways to avoid and/or minimize the adverse effect. If PHMC does not object within the specified review period PennDOT may proceed with resolving adverse effects (see *Chapter IX*).

2. PHMC Review Periods and Expedited Reviews

The PHMC review period will follow the current FHWA/PennDOT/PHMC interagency funding agreement under SAFETEA-LU. If PHMC reviews a finding of No Historic Properties Affected or No Adverse Effect and does not respond within the review period, PennDOT may proceed with the project. For projects where the USACE is the lead agency, the District should check with the appropriate USACE District before proceeding. Some USACE Districts insist upon a response letter from PHMC. The CRP should put a note in the project file documenting the decision to proceed. For a finding of selected No Adverse Effect, or Adverse Effect, a 30-day review will be the norm.

NOTE: It is critical to understand that when a project has an effect on historic resources, it is not possible to expedite the comment period for the effect finding through the SHPO comment period. Even if the SHPO expedites comments on a no adverse or adverse effect finding, the Section 106 Programmatic Agreement mandates that the public and consulting parties have 30 days to comment.

Consequently, project managers need to build adequate time into preliminary design schedules to allow for this comment period. Alternatively, project managers may accept a certain level of risk in moving forward with NEPA approval, specifically the potential for public or consulting party comments that must be addressed after the NEPA document has been approved, and, which may entail a re-evaluation of the NEPA document. Where there have been no identified consulting parties, and where the project is non-controversial, this risk may be acceptable.

Expedited Reviews - PennDOT may occasionally request an expedited review from PHMC. The review time will be mutually agreed upon by PennDOT and PHMC on a case-by-case basis. All requests for expedited review must be made by the Cultural Resources Group Section Chief.

When there is an emergency declared by the President or Governor, PennDOT and PHMC will follow the *Programmatic Agreement among the Federal Highway Administration, the Pennsylvania Department of Transportation, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Emergency Relief Program* (January 14, 2005) for federally-funded projects.

3. Consultation with Tribes/Nations, other Consulting Parties and the Public

PennDOT must seek and consider the views of Tribes/Nations, other consulting parties, and the public whether or not PHMC reviews a determination of effect. Consultation with the public and consulting parties can be accomplished through the existing NEPA process or separately by the CRPs. If the notice to the public or consulting parties is conducted separately from the NEPA

public involvement process, the level of effort should be commensurate with the degree of impact and the resources affected. The effect finding and documentation can be made available through a newspaper, newsletter, public meeting, email, and/or website, as appropriate. Use of Project PATH will be considered sufficient in level of effort for notifying the public and for soliciting consulting parties.

NOTE: Following receipt of comments it is incumbent upon the CRP, working in concert with the project team, the PHMC and any consulting parties to arrange future deadlines for responses to any additional materials/information that may be produced as part of consultations to avoid, mitigation or resolve a potential adverse effect. The default, unless an alternative schedule is established, will be 30 days.

The Section 106 regulations make no requirements for a response period for comments from consulting parties or the public for project findings of No Historic Properties Affected.

If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in Section 800.16(i), the agency official shall provide documentation of this finding, as set forth in Sec. 800.119d) to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the ACHP if it has entered the Section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under Section 106 are fulfilled (36 CFR 800.4(d)(1).

The presumption in the regulation is that the PHMC has 30 days to comment; however, under the Section 106 PA, that comment period is waived. The PHMC and other consulting parties do have the opportunity to object under Stipulation XI within 30 days. As a best practice, it is advisable to allow 30 days for comment prior to approving a NEPA document to allow for receipt of consulting party comments, when consulting parties are participating in a project. Time should also be allowed for consideration of public comments (see **Chapter VI** for more information on public involvement). In cases of a dispute, please refer to **Section F** below.

Participating Tribes/Nations, consulting parties and the public must be notified when a finding of No Adverse Effect has been made as described in the **Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals Document**. The District CRP, in concert with the project team and PHMC, as warranted, will consider any views received concerning the effects of the project in writing and within the 30-day review period afforded by the regulations. Refer to **Section E** below for information concerning resolving disputes when PHMC or a consulting party notifies PennDOT that it disagrees with the finding. If no party objects within the specified review period, including PHMC for projects they are reviewing, PennDOT may proceed with the undertaking without further review.

NOTE: No Adverse Effect for public comment is 30 days and cannot be changed.

Participating Tribes/Nations, consulting parties and the public must be notified when a finding of Adverse Effect has been made and allowed 30 days for a response, as described in the ***Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals Document***. In consultation with PHMC, PennDOT will consider any concerns, comments or information provided by the Tribes/Nations, public, or consulting parties within the 30-day comment period afforded by the regulations.

Pursuant to 36 CFR 800.6(a), PennDOT must consult to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects.

NOTE: The regulations do not proscribe a specific clock to resolving adverse effects. However, pursuant to 36 CFR 800.6, if no response is received within 30 days PennDOT may proceed. However, at the discretion of the CRP, and in consultation with the project team and the PHMC, time extensions may be granted.

Following receipt of comments it is incumbent upon the CRP, working in concert with the project team, the PHMC and any consulting parties to arrange future deadlines for responses to any additional materials/information that may be produced as part of consultations to avoid, mitigation or resolve a potential adverse effect. The default, unless an alternative schedule is established, will be 30 days.

Consultation may involve meetings, phone calls/emails, and field views, as well as submission and review of formal documentation (see ***Chapter IX*** on resolving adverse effects). Meeting minutes and summaries of phone calls should be included in the project files to document consultation.

4. Consultation with the FHWA

The FHWA must be copied on all findings through notifications from Project PATH, in which the PHMC will be reviewing, including all findings of adverse effect. PennDOT will invite FHWA to participate in resolving adverse effects. The FHWA may elect to participate in any project at any time.

5. Consultation with the ACHP

Under the terms of the Section 106 PA, FHWA will notify the Advisory Council on Historic Preservation (ACHP) of an adverse effect only in the following situations:

- When the undertaking will adversely affect a National Historic Landmark;
- When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effect on historic properties, or;
- When PennDOT, PHMC, and FHWA are not able to reach agreement on the resolution of Adverse Effects.

When the ACHP will be notified of an adverse effect, PennDOT will provide documentation consistent with 36 CFR 800.11(e) to FHWA. This will include any Identification and Evaluation

Reports produced and/or a copy of the *Above Ground Historic Properties Field Assessment and Finding Form*, any Feasibility Analysis Report produced, any Effect Report produced (or a description of alternatives considered when no Effect Report was produced), correspondence with PHMC, status of Tribal involvement (if applicable), status of consultation with the public and consulting parties, and, if available, a draft MOA or Letter of Agreement (See **Chapter IX**). For archaeological sites, a proposed mitigation plan should be included. This information should be provided to FHWA in electronic format. FHWA will submit the documentation to the ACHP. The ACHP has 15 days from receipt of the information to advise FHWA whether it will participate in consultation. FHWA will notify the Cultural Resources Unit and the District by letter or email of the ACHP's decision.

No notification to the ACHP is required under the State History Code.

6. Consultation with the USACE

When the USACE is the lead federal agency, PennDOT must follow 36 CFR 800.6 and notify the USACE of any adverse effect finding. The USACE will notify the ACHP. Unless there is an adverse effect, the USACE will generally not be directly involved in the Section 106 process. Copies of letters from PHMC or other documentation will usually be attached to the permit application as evidence of PennDOT's compliance with Section 106 (See **Chapter XI**).

7. Consultation with the National Park Service (NPS)

The NPS must be consulted when a project would affect a National Historic Landmark (NHL). The NPS should be contacted via e-mail at nps_nhl_nereview@nps.gov, or through Project PATH by either selecting the individual contact (currently Bonnie Halda) or the entity, National Park Service NHL. Notify FHWA prior to contacting and/or consulting with NPS/NHL office.

F. DISPUTE RESOLUTION

1. Disagreement with Effect Finding Within the Review Period

If PHMC, a Tribe/Nation, or a consulting party disagrees in writing with the determination of effect or with efforts to avoid, minimize, and/or resolve effects, within the review period, with specified reasons for disagreement, the PennDOT CRP will discuss the disagreement with the objecting party and try to resolve the disagreement. The CRP may request the participation of the Bureau of Project Delivery Cultural Resources Unit. If the disagreement is not resolved, the CRP will notify FHWA (or USACE), who will consult with that party to resolve the disagreement. In situations where agreement cannot be reached with Tribes/Nations or consulting parties, but PHMC has concurred with the determinations, FHWA (or USACE) may proceed with the next step in the process. Alternatively, FHWA (or USACE) may elect to request the ACHP to comment. The ACHP will provide its opinion within 15 days of receiving the documented finding. FHWA (or USACE) will take the ACHP's comments into consideration in making a decision on the project's effect. When agreement on effect cannot be reached with the PHMC, FHWA will request the ACHP to comment.

<p>NOTE: Consulting parties may, at any time, independently request the ACHP to participate in consultation.</p>

For projects subject only to the State History Code, if the PennDOT CRPs cannot resolve the disagreement with PHMC, the CRP should notify the Cultural Resources Unit. If the dispute cannot be resolved, PennDOT and PHMC will submit the dispute to the Office of General Counsel.

Pursuant to 36 CFR 800.4(d)(1) and 36 CFR 800.5(a), if a member of the public objects in writing to a finding within the review period with specified reason(s), PennDOT will take their comments into consideration. Note that the term “consider” is not the same as “consult” under the regulations. To consider means to investigate the substantive merits of the concern and respond. There is no requirement for PennDOT to elevate the objection to FHWA or the ACHP. If the objecting party feels that the objection has not been satisfactorily resolved, they may appeal to FHWA or the ACHP for federal-aid or USACE permitted projects, or to PHMC for projects subject to the State History Code.

2. Disagreement with Effect Finding After the End of the Review Period

If PHMC, Tribe/Nation, or a consulting party responds after the end of the review period, PennDOT is not obliged to reconsider the determination of effect. However, the CRP should discuss the response with the Project Manager or Environmental Manager, as appropriate, and recommend a course of action. The decision will be documented in the project file.

G. RE-EVALUATION OF FINDING

Some projects have a long history and may undergo one or more reevaluations under NEPA. Generally, a finding or determination made under Section 106 or the State History Code does not need to be formally re-evaluated except under the following conditions:

- 1) The project has changed such that the APE for the project is altered,
- 2) Structures or buildings in the APE not previously evaluated for eligibility to the NRHP have now reached the 50 year threshold, or it has been over 5 years since the identification and determination of eligibility of properties in the APE (see *Chapter VII*, Section 5(f)),
- 3) New information is brought to light that would cause the CRPs to reconsider a finding or determination.

If at least one of these conditions is applicable, the CRPs will determine whether additional studies are necessary to identify and/or evaluate properties for the NRHP, and whether the original project exemption or determination of effect is still valid. The CRP will prepare the appropriate documentation and provide it to PHMC, FHWA, and other parties for review according to *Chapter VII* and information provided in this chapter above.

If a NEPA reevaluation is prepared, but the determination of effect is still valid because none of the above conditions apply, the CRP should initial and date the original finding or prepare a file memo to document that the finding has not changed and no additional coordination is necessary.

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IX. RESOLUTION OF ADVERSE EFFECTS

When PennDOT's Cultural Resource Professionals (CRPs) determine that the project will have an Adverse Effect on historic properties, they will issue a finding of adverse effect (see *Chapter VIII*). The CRPs will then enter into consultation to resolve the adverse effects, except when a standard treatment applies (see *Chapter X*). The outcome of the resolution of adverse effect may be the development of alternatives to avoid adverse effects, developing options to minimize adverse effects, or agreeing to mitigate adverse effects.

When the Federal Highway Administration (FHWA) is the lead agency, a Memorandum of Agreement (MOA) or Letter of Agreement (LOA) will be prepared when agreement is reached on how the adverse effects will be resolved. If the U.S. Army Corps of Engineers (USACE) is the lead agency, a MOA will be prepared. For 100% state funded projects without a USACE permit, the agreement document is called a Letter of Understanding (LOU).

NOTE: A Programmatic Agreement (PA) will be prepared when the effects to archaeological sites are not known prior to approval of the NEPA document **and** when use of the *Deferral of Archaeological Testing* form does not apply (see *Chapter VII*).

A. CONSULTATION

Per 36 CFR 800.6, the resolution of adverse effects involves consultation with FHWA (or the USACE), Pennsylvania Historical and Museum Commission (PHMC), Federally-recognized Tribes/Nations, and other consulting parties. Information must also be made available to the public and any public comment should be taken into consideration. Please note that, in accordance with 36 CFR 800.11(c), archaeological site locations must not be disclosed to the general public.

In the past, resolving adverse effects often meant preparation of an Effects Report that included proposed mitigation, and a request that PHMC concur with the adverse effect finding and the proposed mitigation. The intent of the Section 106 PA is to seek a resolution of adverse effects by engaging in a dialogue with consulting parties, PHMC and the public through meetings, and/or video conferences and/or field views, or other means. The documentation prepared for the Adverse Effect finding may include options for mitigation, but this should be considered a starting point for discussion.

When there are many consulting parties involved, it may be beneficial to have a meeting with the consulting parties to discuss any concerns and solicit recommendations on how adverse effects may be resolved, although a consulting party meeting is not required.

Additional consideration must be given when an eligible archaeological site has known or expected burials. The District Archaeologist must notify Tribes/Nations with ancestral ties to Pennsylvania who may not have previously expressed interest in the project. These Tribes/Nations must be given the opportunity to consult on the resolution of adverse effects (see *Chapter V*).

B. PREPARING A MOA, LOA, LOU, OR PA

When FHWA, PennDOT, and PHMC agree on how a project's adverse effects will be resolved, they will execute either a MOA or a LOA. A MOA is a legal agreement that stipulates the measures that will be taken to mitigate adverse effects. A LOA, also a legal agreement, is unique under the Section 106 PA and may only be used when a Tribe/Nation or other consulting party that would sign the LOA has also signed the Section 106 PA. Otherwise, a MOA must be executed. The LOA is a streamlined version of a MOA in that the administrative stipulations and many of the *whereas* clauses fall under the umbrella of the Section 106 PA and need not be repeated in the LOA. The mitigation commitments in a LOA are selected from a pre-approved list of mitigation commitments. The LOA does not need extensive legal review.

When the USACE is the lead agency, a MOA must be executed. The LOA cannot be used because the USACE is not party to the FHWA Section 106 PA.

If the Advisory Council on Historic Preservation (ACHP) has elected to participate (see **Chapter VIII**), FHWA or USACE will be responsible for coordination with the ACHP. In most cases, the ACHP will not be involved. When the ACHP is not a signatory, the federal agency, consistent with 36 CFR 800.6(b)(1), will submit a copy of the signed MOA or LOA and documentation specified in 36 CFR 800.11(f) to the ACHP.

A project PA is used when effects to historic properties are not known prior to the approval of the NEPA document. This is almost exclusively used when archaeological testing cannot be completed in preliminary design. The PA is a legal document that commits FHWA/PennDOT to complete the Section 106 process in final design, and allows PennDOT or FHWA to approve the environmental document. In practice, effects on above-ground historic properties must be determined and any mitigation measures for adverse effects must be included in the PA. It is expected that the number of PAs will be reduced through the use of the *Deferral of Archaeological Testing* form under certain conditions (see **Chapter VII**).

For state funded projects without a USACE permit, a LOU between PennDOT and the PHMC is usually prepared. The format of the LOU is similar to that of a MOA. The MOA, LOA, and PA, once executed, is a legally-binding agreement on the signatories.

NOTE: Appendices 4 through 7 contain examples of a PA, MOA, LOA, and LOU. Mitigation measures for both archaeological and above-ground historic properties must be included in the same Agreement document if both are adversely affected.

1. Who Signs a MOA, LOA, LOU, or PA

The parties involved in signing a MOA, LOA, or PA are called signatories, invited signatories, or concurring parties, depending on their responsibilities and involvement in the Section 106 process. Signatories include the federal agency (FHWA or the USACE, as appropriate), the PHMC, and the ACHP if they are participating in the project. The ACHP generally does not sign project MOAs or PAs and the two-party agreement is the most common. The ACHP, FHWA (or USACE), and PHMC would be signatories to a three-party agreement. Invited signatories are parties that generally have a major responsibility under an agreement and are

invited by the federal agency (FHWA or USACE, as appropriate) to sign an agreement as an invited signatory. Because of PennDOT's role in carrying out the stipulations of a MOA, LOA or PA, PennDOT may be an invited signatory. A signatory or an invited signatory has the sole authority to execute, amend, or terminate the agreement (36 CFR 800.8(c)(1)).

Depending upon their participation in consultation, other parties may be invited to sign a MOA, LOA, or PA as a concurring party. Concurring parties are individuals or organizations that are invited by PHMC and the federal agency to participate in the project and concur in the agreement. Concurring parties should either have a role in the implementation of any mitigation measures, or, have a demonstrated need to publicly support the MOA and its terms.

Tribes/Nations who have an interest in a particular project are usually invited to concur in the agreement. FHWA (or USACE) may also invite consulting parties to concur in the MOA, LOA, or PA. When a federally funded project is sponsored by a local entity and there are no state funds involved (e.g. a Transportation Enhancement (TE) project), PennDOT should sign as a concurring party. The refusal of any party invited to concur in the MOA, LOA, or PA does not invalidate the MOA, LOA or PA, and the agreement may proceed without their signature. Concurring parties do not have the authority to execute, amend, or terminate an agreement document.

For 100% state funded projects subject to the State History Code, the signatories to a LOU are PennDOT and the PHMC. If there are Tribes/Nations or other consulting parties involved in the project they may be invited to concur in the LOU. The ACHP is not involved.

2. Review and Routing of Agreement Documents

The MOA, LOA, LOU, or PA will be prepared or reviewed by the District Archaeologist and/or Architectural Historian, as appropriate. The District CRPs are encouraged to prepare agreement documents, although consultants may be assigned the responsibility if workload or other factors do not allow them to be completed in a timely manner. All MOAs, LOAs, LOUs, and PAs are to be forwarded to PennDOT's Bureau of Project Delivery Cultural Resources Unit. The Cultural Resources Unit is responsible for review of agreement documents and coordination with PHMC, FHWA, and the Office of Chief Counsel (OCC). MOAs, LOUs, and PAs are reviewed by the OCC, Office of General Counsel (OGC), and the Office of the Attorney General (OAG), with OCC taking responsibility to coordinate OGC and OAG reviews. LOAs are reviewed only by the OCC. The District CRPs will be responsible for coordinating the review with Tribes/Nations and other consulting parties.

A draft agreement will normally be circulated prior to requesting the parties to sign. The Cultural Resources Unit will usually send the draft concurrently to the reviewers by e-mail. Once a MOA, LOA, LOU, or PA is ready for signature, the District Archaeologist or Architectural Historian will obtain signatures from participating Tribes/Nations and/or other consulting parties. If several Tribes/Nations or consulting parties are signing the agreement, the District may obtain signatures concurrently. The District will then forward the MOA, LOA, LOU, or PA to the Cultural Resources Unit. The Cultural Resources Unit will circulate the documents within PennDOT, and to PHMC and FHWA, as appropriate, for signature.

If the USACE is the lead agency, the District CRP will consult with the appropriate USACE district. Some USACE districts may prefer to take the lead in circulating draft agreements and in obtaining the signatures from PHMC and other parties. The Cultural Resources Unit must still review the agreement and circulate it for PennDOT and OCC signatures.

The preparation of and obtaining signatures for an agreement document is a lengthy process and adequate time must be built into the project schedule when the District anticipates that a MOA, LOA, LOU, or PA will be required. An average of 2.5 to 3 months should be expected for the execution of a MOA, PA or LOU. Thirty days is normally allotted for review of a draft. The MOA/PA/LOU is revised, if needed, then circulated for signature. The MOA/PA is executed once the FHWA (or USACE) signs the agreement. For LOUs the agreement is executed when the PHMC has signed. It is expected that the new LOA will reduce the time to execute an agreement by three to four weeks.

A signed MOA, LOA, LOU, or PA is a legally binding agreement and it is the responsibility of the District CRPs to monitor the implementation of PennDOT commitments. The Cultural Resources Unit, PHMC, and FHWA should be kept informed on the progress of the implementation. The cultural resource tracking database has a section for recording mitigation commitments. The District Archaeologist or Architectural Historian will enter mitigation commitments in the appropriate section and, upon the completion of each stipulated activity, shall update the database. These commitments also need to be entered into the Environmental Commitments and Mitigation Tracking System (ECMTS). The Project Manager, or Environmental Manager (where applicable) must ensure that all commitments contained within the agreement document are carried forward into Final Design and Construction through the Plans, Specifications and Estimate (PS&E) package and contract provisions.

The District CRPs should also monitor the agreement's sunset clause. If the mitigation commitments are unable to be completed prior to the date specified in the sunset clause, an amendment to the agreement must be executed that extends the time to complete the commitments.

If the funding for the project should change after an agreement has been executed, PennDOT must notify the appropriate agency. If, for example, funding is changed from Federal-Aid to 100 % state after the execution of a MOA or LOA, FHWA must officially terminate the agreement by notifying all the signatories and concurring parties. PennDOT will then either execute a new agreement (MOU) with the PHMC (if there is no USACE permit) or agree in a letter signed by the Bureau Director to complete the unfinished commitments. If the project requires a USACE permit, PennDOT would execute a new MOA with the USACE.

3. Disagreement on Resolutions of Adverse Effects

If there is disagreement on the resolution of adverse effects and the disagreement cannot be resolved, FHWA will follow the requirements of 36 CFR 800.7 to complete the Section 106 review process. FHWA will request the comments of the ACHP and notify all consulting parties of the request. The ACHP will respond within 45 days. FHWA will take these comments into consideration in reaching a final decision on how adverse effects will be resolved.

C. MITIGATION FOR ABOVE GROUND HISTORIC PROPERTIES

The nature and type of mitigation for adverse effects to above ground historic properties will depend on a number of factors, including, but not limited to, the nature of the adverse effect, the nature of the project, the views expressed by the project team (including the District Architectural Historian), the views expressed by PHMC, consulting parties and the public, as well as project constraints and parameters. While a few project types have standard treatments for avoiding or mitigating adverse effects (see *Chapter X*), the majority of projects will have mitigation developed specifically for that project.

For adverse effects to buildings, sites, objects, and/or districts, mitigation will generally be of three types:

- Commitments to design elements for the project that minimize impacts to historic properties,
- Scholarly research and/or site recordations for the purpose of advancing the understanding of a property or property type and/or preserving a record of the existence of a property, or
- A public education component.

1. Design Elements

The first type of mitigation activity, design elements for the project, would typically be activities that are completed as part of project construction; however, discussions will begin prior to the conclusion of Section 106 and the development of a MOA and will likely need to continue during final design. For example, mitigation might consist of providing landscaping that is in keeping with adjoining historic properties and/or the affected historic properties. Alternatively, it might consist of returning the setting of a property as close to its pre-construction appearance as possible through plantings, screenings and/or noise walls. It might also consist of minimizing road widths, right-of-way, and applying the principles of context sensitive design, and Smart Transportation to allow for the least impact to properties possible while meeting project needs.

Bridges in Historic Districts: A bridge in an historic district is one example where context sensitive design and the principles of Smart Transportation can come into play. It is PennDOT's policy to design bridges which are, to the degree possible, sensitive to, or in keeping with, their historic setting. This does not mean that PennDOT can, or should, build replica bridges. Safety is paramount and there are times when certain features of historic bridges do not meet modern safety standards. Also, there may be engineering constraints and hydraulic issues that dictate the type of bridge that can go into a particular location. However, it is incumbent upon PennDOT project managers and others on the project team, to work with PHMC, consulting parties, and the public to consider the flexibility allowed by AASHTO, state and federal transportation policy and guidelines, as well as the Smart Transportation philosophies adopted by PennDOT, in designing context sensitive bridge projects.

2. Recordations and Scholarly Research

Recordations:

Federally funded or permitted projects adversely affecting historic properties through significant changes or demolition must be documented through an historic recordation. A recordation is the creation of a permanent record of the existence and significance of a property. Section 110(b) of the National Historic Preservation Act of 1966, as amended) states that:

Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

In Pennsylvania, properties that are determined to be significant at the state or local level will typically be documented to state level standards. This is true for federally funded or permitted projects as well as state funded projects subject only to the State History Code. However, this decision will be made at the time of a project through consultation with the federal agency and PHMC, and in consideration of any views expressed on the matter by the public and/or consulting parties.

The current PHMC standard for state level recordation is the production of a PHRS form with photographs meeting the National Park Service's expanded policy for electronic photos (see PHMC National Register photo policy checklist at <http://phmc.info/historicpreservation> under Forms and Guidance).

Individually Eligible Bridges: PennDOT contracted with the Historic American Engineering Record (HAER) over several summers to produce HAER documentation of significant bridges in Pennsylvania. These bridges were selected by HAER as worthy of full HAER recordation, including large format photographs, measured drawings and histories. This documentation, along with HAER recordations completed and sent to the National Park Service for other nationally significant Pennsylvania bridges as mitigation for the Section 106 process, are available at the HAER website (http://memory.loc.gov/ammem/collections/habs_haer/). It is currently PennDOT's understanding that HAER level recordation, for historic bridges not previously recorded to HAER standards, is warranted only when bridges are determined to be significant on the national level. Therefore, and unless directed otherwise, state or locally significant historic bridges to be demolished will be recorded to state level standards unless sufficient documentation meeting these standards already exists. In general, the statewide historic bridge survey (completed in 2001) meets or exceeds state level recordation standards for bridges determined eligible, including production of archival quality black/white images which are presently in the possession of the PHMC. Therefore, it is generally advisable to not recommend a state level recordation of a state or locally significant bridge determined eligible in the statewide historic bridge survey. However, utilizing this information to disseminate the information it contains to the public is often a useful mitigation option. Nationally significant bridges not previously recorded to HAER standards that will be demolished should be

documented to HAER standards and submitted to the National Park Service, the PHMC, and any other local repository that might be warranted.

Bridges Contributing to an Eligible Historic District: Bridges that are not individually eligible but contributing to an eligible Historic District will generally not be recorded unless not sufficiently documented as part of the comprehensive statewide historic bridge survey or other previous evaluation. For example, a bridge that was not recorded through field view and photographs as part of the historic bridge survey must be documented through completion of a PHRS form. To determine if a bridge was or was not recorded through field view, refer to the “photo index” field on the bridge survey form for the subject bridge. If there is not a photo log number, the bridge was NOT evaluated in the field as part of the bridge survey and no photographic recordation of the bridge exists.

Scholarly Research:

Certain adverse effects may warrant the collection of information, such as through a “white paper” or other scholarly research, meant to foster the further understanding of a resource or class of resources. While this information, when produced, should be placed with depositories available to the public, the information is not typically produced with the intention of being for general public consumption, and therefore, it may be acceptable to utilize technical language and jargon. An example might be to research the technological advancement of a particular bridge type or method of construction to add to the body of professional knowledge about that particular bridge type or method of construction. For bridges, this type of mitigation might be done in lieu of a traditional recordation when this information already exists.

3. Public Education Components

As mitigation is being funded through tax dollars, it is important that projects consider mitigation options which can benefit the public, typically in the form of educational activities or products. **Section IX.E** below outlines some of the many forms such activities or products can take. The type of activity completed must be done in consultation with PHMC, consulting parties, the public, FWHA or the USACE, and the project team, and will depend on a range of factors including, but not limited to, the nature of the project, the nature of the effects, the nature of the intended audience, as well as project constraints and parameters. The PHMC has established a mitigation committee whose goal is to work with PennDOT on making mitigation useful and publicly accessible. In particular, the PHMC website is a useful tool for dissemination of historic preservation educational information that can be considered in the development of mitigation ideas. The project team is encouraged to work with the mitigation committee early in the project development process, once a determination is made that avoidance of adverse effects is not possible.

D. MITIGATION FOR ARCHAEOLOGY

Most archaeological sites are eligible for the National Register under Criterion D, for the important information they contain. The traditional mitigation for adverse effects to archaeological sites is data recovery excavations. Non-excavation alternatives have become acceptable (see below for alternative mitigation concepts) and may be considered when

appropriate. FHWA has also requested that site preservation-in-place also be considered (*see Chapter VIII.C.6*).

1. Data Recovery

a. Data Recovery Plan

When the resolution of adverse effects to an archaeological site is data recovery excavations, a Data Recovery Plan will be developed in consultation with FHWA, PHMC, and with the opportunity for input from Tribes/Nations involved in the project and consulting parties (*Chapter V*). A draft data recovery plan will often be included in the Identification and Evaluation (Phase I and II) Report but may also be a separate document. The data recovery plan will include the following components:

- *Research Questions.* The data recovery plan will specify the research questions the site is expected to answer. Research issues will vary with the type of archaeological site. Some examples of research topics for prehistoric sites include paleoenvironmental reconstruction; seasonality of occupation and subsistence strategies; cultural interactions and exchange mechanisms; and raw material procurement and utilization. For historic sites, research topics may include consumer behavior trends and intrasite (agricultural) land-use patterns. Background research should utilize both primary and secondary archival data including use of oral histories, as appropriate.
- *Excavation Strategy.* The plan will discuss the methodology or methodologies to be used, the size of area to be excavated and the number and placement of excavation units. Data recovery excavations may use specialized techniques, such as remote sensing, and collection strategies for specialized analyses, such as radiocarbon or thermoluminescence dating, artifact residue analysis, flotation, or paleoenvironmental reconstruction. It is recommended that excavation be staged to allow the District Archaeologist and PHMC to monitor progress and to discuss any changes that may be proposed to the data recovery plan.
- *Analyses.* The data recovery plan will also propose the kinds of analyses to be conducted on the artifacts and materials recovered. Examples of analyses for prehistoric sites include but are not limited to: chronology; lithic raw material identification; microscopic lithic edge-wear analysis; thin sectioning and petrographic analysis; neutron activation analysis; radiocarbon or other dating techniques; analysis of vertebrate and invertebrate faunal remains; analysis of botanical remains. On historic sites, examples of artifact analyses include chronology, analyses of glass and ceramics, analyses of perishable materials (wood/leather/textiles), and vertebrate faunal analysis. The analyses should be focused on providing information to answer the proposed research questions.
- *Public Information.* Each data recovery plan will include a public information component. Data recoveries involve large expenditures of public dollars and it is important to inform the public, especially the local community, about the results of these excavations. The type of public information materials should be decided individually for each project. Materials produced for the public on past projects have included brochures,

videos, booklets, exhibits, lectures, and site tours. See below for a discussion of public informational materials.

- *Burials/Human Remains.* If there is a high potential for finding burials, either pre-contact or historic, the data recovery plan needs to include a provision for consultation with Tribes/Nations (*Chapter VI*), descendants, or other relevant parties.
- *Curation of Artifacts and Records.* Each data recovery plan will include a provision for curation of artifacts and records. See *Chapter XIV* for curation standards and procedures.

The data recovery plan will be consistent with PHMC guidelines and is to be reviewed by the District Archaeologist, FHWA, PHMC, consulting Tribes/Nations, and other consulting parties as appropriate.

b. Ownership of Artifacts

The District must ensure that prior to any data recovery, the land is either owned by the Commonwealth, OR the property owner is willing to donate the artifacts to the State Museum of Pennsylvania (see *Chapter XIV*). If PennDOT will not own the right-of-way (ROW) at the time of the data recovery AND the property owner does not want to donate the artifacts to the State Museum, the District Archaeologist must notify the Cultural Resources Unit and FHWA. Data recovery excavations represent a large expenditure of public funds and are designed to recover important information. If artifacts will not be available for future research or exhibit, then additional analyses will be warranted in order to offset the loss. It may be advisable to wait until PennDOT acquires the ROW before proceeding with the excavations. FHWA and PennDOT will consult with PHMC, consulting Tribes/Nations and other consulting parties, as appropriate, on whether to proceed with the data recovery excavations when the property owner requests the return of the artifacts.

c. Data Recovery Excavation

Data recovery excavation is often undertaken during final design or after a project alternative has been selected. The consultant will conduct excavations according to the approved Data Recovery Plan. Whenever possible, data recovery should not be undertaken during the winter or during periods of inclement weather. Winter archaeology usually adds to the cost of the project because of added logistics and equipment necessary to keep the site protected from the weather. The quality of the work conducted during the winter may also be affected.

The consultant will keep the District Archaeologist informed of progress through e-mail, phone calls or brief written summaries, as appropriate. The District Archaeologist should schedule field views with PHMC after each stage of work to discuss results and any changes that might be proposed to the data recovery plan. FHWA and any consulting Tribes/Nations should be invited.

At the conclusion of the data recovery excavations, the District Archaeologist will request concurrence from PHMC that the fieldwork has been completed according to the approved Data Recovery Plan. This will allow the District to move forward with project construction without waiting for a report to be completed.

The consultant will conduct analyses according to the Data Recovery Plan and will prepare a report on the results of the excavations and analyses. The report should be consistent with the PHMC's archaeology guidelines and *Chapter XII*. The consultant will submit the report to the District Archaeologist for review. The District Archaeologist may request revisions. The District Archaeologist will then submit the report to FHWA, PHMC, consulting Tribes/Nations, and any other consulting parties for review.

d. Burials/Human Remains

If human remains, graves, or grave-related objects are encountered during excavation the consultant shall cease work and immediately notify the District Archaeologist. The District Archaeologist shall in turn notify the Cultural Resources Unit, FHWA, and PHMC. Dependent on the age of the burial(s) the County Coroner and/or Federally-recognized Tribes/Nations with ancestral ties to Pennsylvania (see *Chapter V*) must be notified consistent with Pennsylvania State Law Title 9 P.S. § 41-47, or the Tribal MOUs, the *Tribal Consultation Handbook* (Publication 591) and the *Tribal Consultation Handbook Appendix* (Publication 592).

FHWA shall meet with the appropriate parties to discuss a course of action with regard to the human remains, graves, or grave-related objects. Excavation of these remains, grave, or grave-related objects should not be assumed. FHWA will consider the views of all parties involved in making a decision on how the human remains, graves, or grave-related objects will be treated (see *Chapters V and VI*).

e. Curation of Artifacts and Records

Upon acceptance of the data recovery report by PHMC, the consultant shall pack and deliver artifacts, signed gift agreements and all project records to the State Museum of Pennsylvania or other approved repository for permanent curation. PennDOT is responsible for the curation fee, currently \$350 per cubic foot. If the artifacts were excavated from privately owned land and the property owner does not wish to sign the PHMC gift agreement, the artifacts must be returned to the owner. See *Chapter XIV* for additional information regarding curation of artifacts and records.

2. Alternative Mitigation Concepts

There are situations where an alternative to data recovery excavations may be a more appropriate mitigation for adverse effects to archaeological sites. The decision to propose a mitigation alternative to data recovery must be applied on a case-by-case basis and is not appropriate in all situations. A site in a poorly known area of the state or containing a rare component would not be a good candidate since any information obtained from these sites would be desirable. Cases where alternative mitigation might be considered appropriate include projects that will affect a very small portion of a site (e.g. a sliver take), where the potential benefits of data recovery are far outweighed by excavation costs due to logistical problems (e.g. deeply buried sites in an urban setting), or where there is hazardous waste contamination.

Examples of creative or alternative mitigation include, but are not limited to, the synthesis of archaeological information for a watershed or region, creation of a permanent exhibit, or analysis of local archaeological collections to answer particular research questions.

Alternative/creative mitigation plans will be reviewed by the District Archaeologist, the Cultural Resources Unit, PHMC, FHWA, Tribes/Nations, and consulting parties, as appropriate.

E. PUBLIC OUTREACH AND EDUCATION

The results of mitigation for adverse effects to historic properties/archaeological sites should be shared in one way or another with the public that paid for it. A variety of public education and outreach vehicles are available to meet this requirement. The scope and nature of public education and outreach should be closely matched to the resource affected, the nature and scope of the effects, and most importantly, the target audience. The CRP is responsible for ensuring that mitigation commitments are tracked and completed. This should be done by entering the commitments into the Environmental Commitments and Mitigation Tracking System (ECMTS).

The following is a range of some possible vehicles for public outreach, and the specific approach chosen for a particular mitigation could include any one or almost any combination of these choices. This is not an exhaustive list.

Archaeological Site Tours

Site tours are only appropriate in locations where the safety of visitors, motorists, and workers can be assured and where there is no evidence of human remains or funerary objects. Signed liability releases are required for all site visitors. A knowledgeable and articulate guide who has worked on-site and has specific knowledge about the site should be detailed to lead the tour and should be available to answer questions. If the tour group consists of K through 12 students they should be accompanied by their teacher(s) and the tour leader should have experience instructing K–12 students. Tour groups of university undergraduate or graduate students should be accompanied by their instructor(s). Tour leaders should acknowledge PennDOT's/FHWA's sponsorship of the project, and explain the rudiments of Cultural Resource Management to the tour participants in a format that is appropriate to the age and level of education of the tour group. Tours can be conducted to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. If the tours are targeted at the general public rather than an invited group, they should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release should be required.

Books

Books intended for the public should be written by authors with direct, demonstrable experience writing for non-professionals. They should be produced and printed by experienced professional designers and printers. They should make ample use of images and refrain from excessive technical detail. Glossaries may be employed when the use of some technical terms is unavoidable. Books should acknowledge PennDOT's/FHWA's sponsorship of the project, and explain the rudiments of Cultural Resource Management to the readers in a format that is appropriate to their age and level of education. They can be prepared to complement other education-based deliverables such as lesson plans, booklets, films, websites, or exhibits. Due to their lengths and production/printing costs, books should be reserved for large scale projects and especially important sites and properties. A distribution plan detailing how the book will be made available to the interested public is required.

Brochures/Pamphlets

Brochures and pamphlets intended for the public should be written by authors with direct, demonstrable experience writing for non-professionals. They should be produced and printed by experienced professional designers and printers. They should make ample use of images and refrain from excessive technical detail. They should acknowledge PennDOT's/FHWA's sponsorship of the project, and explain the rudiments of Cultural Resource Management to the readers in a format that is appropriate to their age and level of education. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. A distribution plan targeting primarily local residents and detailing how the brochures/pamphlets will be made available to the interested public is required.

Byways to the Past Booklets

These booklets (typically 5,000 to 10,000 words with images) are a series of publications on PennDOT/FHWA archaeology and historic preservation projects in the Commonwealth. They are carried in the PHMC Publications Catalog. They target the general public and secondary school-age students. Prospective contributions to the series must be reviewed by the PennDOT Byways Publications Committee. Manuscripts must be written by authors with direct, demonstrable experience writing for non-professionals, and are reviewed by District staff, the Cultural Resources Unit and PHMC Publications. To ensure a consistent appearance, a design template, available free through the Cultural Resources Unit, is required for contributions to this series. Contributions to the series should be produced and printed by experienced professional designers and printers. They can be prepared to complement other education-based deliverables such as lesson plans, books, films, websites, or exhibits. Release of the booklets should be accompanied by appropriate local and regional publicity that acknowledges PennDOT's/FHWA's sponsorship and preparation of press releases and a plan for their release is required. A distribution plan targeting local residents and detailing how the booklets will be made available to the interested public is required.

Exhibits

Exhibits of artifacts and/or photographs and drawings should be prepared and produced by professionals with demonstrable professional experience in the preparation and fabrication of exhibits. Exhibits should address conservation and security requirements for the exhibited materials. Exhibits should acknowledge PennDOT's/FHWA's sponsorship of the project, and employ design elements, objects, images, and language that are appropriate to the age and level of education of the audience. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, or websites. The exhibit should be accompanied by appropriate local and regional publicity. Preparation of press releases with a schedule of the exhibit's appearances is required.

Films

Films should be prepared and produced by professionals with demonstrable professional experience in videography. Partnerships with Commonwealth Media Services, Public Television, and other non-profit production venues with experience in producing and distributing educational films are encouraged. Films should acknowledge PennDOT's/ FHWA's sponsorship of the project, and explain the rudiments of Cultural Resource Management to the viewers in a

format that is appropriate to their age and level of education. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, websites, or exhibits. Due to their production costs, films should be reserved for large scale projects and especially important sites and properties. A distribution plan detailing how and when the film will be broadcast and made available to the interested public is required. Release and broadcasting of films should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Informational Kiosks

Informational kiosks set up at public meetings, schools, professional meetings, commercial locations, fairs, and other public venues should be staffed by knowledgeable and articulate people who have specific knowledge about the site, property, or project under consideration. Materials exhibited and/or distributed at the kiosk should conform to the standards of PennDOT. Kiosks should acknowledge PennDOT's/FHWA's sponsorship of the project in question, and explain the rudiments of Cultural Resource Management to visitors in a format that is appropriate to their age and level of education. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. A schedule detailing when and where the kiosk will be set up is required. Appearances of the kiosk should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Lesson Plans

Lesson plans should be developed to conform to the standards promulgated by the Pennsylvania Department of Education for History, Social Studies, and other disciplines. They can be developed to complement other education-based deliverables such as booklets, films, websites or exhibits. They can be developed as contributions to existing series of lesson plans such as the National Historic Landmarks Program's "Teaching with Historic Places" series or the "Project Archaeology" series. Lesson plans should be prepared and produced by professionals with demonstrable professional experience in primary or secondary education and should acknowledge PennDOT's/FHWA's sponsorship of the project. A distribution and/or advertising plan targeting intermediate units or school districts in the vicinity of the project and detailing how the lesson plans will be made available is required. Release of a lesson plan should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

National Register and National Historic Landmark Nominations

Nominations must conform to the standards of the National Register of Historic Places and, in the case of Landmark nominations, to the standards of the National Historic Landmarks office. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. Nominations should be prepared by professionals with demonstrable professional experience in the preparation of NR/NHL forms. Formal listing of properties on the National Register or as Landmarks should be accompanied by appropriate local and regional publicity that acknowledges PennDOT's/ FHWA's sponsorship of the nomination. Preparation of press releases and a plan for their release is required.

Posters

Promotional posters should be designed by professionals with direct, demonstrable experience in layout and design. They should be produced and printed by experienced professional designers and printers. They should make ample use of images and refrain from excessive text and technical detail. Posters should acknowledge PennDOT's/ FHWA's sponsorship of the project, and should depict their subject matter in a format that is appropriate to the age and level of education of the target audience. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. A distribution plan specifying the target audience and detailing how the posters will be made available to the interested public is required. Release of a poster should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Public Lectures and Presentations

Lectures and presentations should be prepared and delivered by knowledgeable and articulate people who have specific knowledge about the site, property, or project under consideration. They should acknowledge PennDOT's/ FHWA's sponsorship of the project in question, and employ presentation techniques, images and objects appropriate to the age and level of education of the target audience. They can be presented to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. Public lectures and presentations should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Roadside Signage and Markers/Commemorative Plaques

Signs, markers, and commemorative plaques should be designed by professionals with direct, demonstrable experience in exhibitory and sign layout and design. They should be produced and cast or manufactured by professionals with demonstrable professional experience in the preparation and fabrication of exhibits, signs and commemorative plaques. They should be designed to provide for regular maintenance, revision and repair as necessary. They should acknowledge PennDOT's/FHWA's sponsorship of the project, and should depict their subject matter in a format that is appropriate to the age and level of education of the target audience. Completion of a sign, marker, or plaque should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Websites

Educational and informative websites should be designed by professionals with direct, demonstrable experience in web design, and web copy should be written by authors with direct, demonstrable experience writing for non-professionals. They should make ample use of images and refrain from excessive text and technical detail. Websites should acknowledge PennDOT's/FHWA's sponsorship of the project, and employ design elements, objects, images, and language that are appropriate to the age and level of education of the audience. They can be prepared to complement other education-based deliverables such as lesson plans, books, booklets, films, or exhibits, some of which may be made available as downloads at these sites. New websites should link with the PennDOT Cultural Resources site (www.PENNDOTCRM.org).

Launch of a website should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

Workshops/Classes

Workshops and classes should be taught by knowledgeable and articulate people who have specific experience with the subject under consideration. Where possible or desirable they may be conducted in partnership with universities, primary and high schools, institutes, or other educational entities. They should acknowledge PennDOT's/FHWA's sponsorship, and employ presentation techniques, images, and objects appropriate to the age and level of education of the target audience. They can be presented to complement other education-based deliverables such as lesson plans, books, booklets, films, websites, or exhibits. Workshops and classes should be accompanied by appropriate local and regional publicity and preparation of press releases and a plan for their release is required.

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X. STANDARD TREATMENTS

Referenced under 36 CFR 800.14(d), standard treatments may be established by the Advisory Council on Historic Preservation (ACHP) as standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of the Section 106 process. Standard treatments have been fully vetted and studied by the ACHP and Section 106 users and carry the ACHP's explicit endorsement. The intent of standard treatments as a program alternative is to establish best practices which encourage excellence through the application of widely accepted historic preservation practices. By doing so, federal agencies can expedite their Section 106 compliance process for undertakings that incorporate these standard treatments into project planning and design.

Within the context of PennDOT's program, standard treatments are used to avoid adverse effects, avoid potential adverse effects, and to mitigate adverse effects. The specific standard treatments outlined in this chapter have been proven effective in one of these two goals, and their use is sanctioned by the Federal Highway Administration (FHWA), the Pennsylvania Historical and Museum Commission (PHMC), and the ACHP.

Section 106 encourages flexible application and case-by-case consideration of the effects on historic properties. PennDOT has taken that philosophy further by encouraging creativity and ingenuity in developing unique and responsive Section 106 solutions, particularly in PennDOT's creative mitigation efforts. There are circumstances where standardizing how adverse effects are avoided or mitigated is desirable. These are instances where the suite of practical options are severely limited, or, the treatment is a proven best practice and replicable.

Standard treatments have their advantages. Because they are standardized, they can be predictably applied to a particular problem. The methodology can be spelled out in advance and shared with stakeholders. For consulting parties such as the SHPO, repeated use of a standard treatment can result in an efficient and rapid Section 106 consultation process.

NOTE: Although there is an apparent appearance of a conflict between the philosophies of flexible application of Section 106 and of standard treatments, in practice they can be kept separate. In most of the project situations for the treatments described in this chapter, there are few options for avoiding or mitigating adverse effects. The classic example is the bridge that is only contributing to a historic district, not individually eligible, and for which there is no prudent and feasible Section 4(f) avoidance alternative. In these situations, the bridge is going to be replaced and the most historically effective and cost effective solution is to replace the bridge with one sensitive to the historic context of the district. The use of removable geotextile and fill to avoid impacts to archaeological resources for temporary runarounds is another example.

The primary disadvantage of a standard treatment is that rote use of the treatment without considering other options can lead to a lost opportunity for creative solutions through more extended consultation. The Cultural Resources Professional (CRP) needs to be aware of other possible solutions in selecting a standard treatment, and weigh the value of extending

consultation over how the adverse effect is to be avoided or mitigated versus the efficacy of the standard treatment. Standard treatments should be used when there are no competing solutions that are worth discussing, not merely because it is available for use.

A. STANDARD TREATMENT OPTIONS TO AVOID ADVERSE EFFECTS

The following standard treatments are approved for the named project activities within or adjacent to historic districts or historic properties, as determined by PennDOT CRP:

- Installation of new guide rail (weathering steel, wood-faced, and /or painted).
- Installation of new lighting (in-kind or historic replica).
- Replacement of curbs, curbing and sidewalks provided in-kind or compatible modern materials are used.
- Installation of new curbing and sidewalks using brick, slate, granite or other stone; or concrete when already present within a historic district.

B. USE OF GEOTEXTILE AND FILL IN TEMPORARY CONSTRUCTION AREAS

The use of geotextile and fill may be used in temporary construction areas to protect archaeologically sensitive locations from construction-related damage. Geotextile and fill may be applied in lieu of Phase I identification testing or after a site has been identified. Note that these procedures are applicable to temporary construction areas only. When permanent site preservation-in-place is either being considered or has been chosen as a mitigation option, additional considerations must be taken into account. See *Chapter VIII.C.6* for further discussion of preservation in place.

The process of installing and subsequently removing the geotextile and fill must be done in a manner that will ensure that the soil package is protected from excessive compaction and other disturbance. Preconstruction compaction analysis can be used to determine the construction equipment and fill material load limits that are allowable without causing soil compression. Studies have determined that pressure must not exceed 7.88 pounds per square inch (psi).

As the depth of the fill increases, the pressure exerted by any equipment crossing the site is further dissipated. The following procedures must be communicated to the contractor and included as a special provision in the contract.

- If removal of vegetation (including trees) is required, only hand held tools are permitted. Vegetation must be cut flush with the ground surface. No grubbing is to be performed, leaving all roots in place.
- Excavation, grading, or removal of topsoil is not permitted.

- A layer of Class 4, Type C geotextile will be placed by hand over the area to be protected. This will act as a barrier between the existing ground surface and the fill material.
- At least a one foot layer of coarse sand or aggregate will be placed over the geotextile in a manner that does not subject the area to be protected to compression. The equipment placing the fill material will run on the surface of the placed material and not on the original ground surface. To avoid damage to the original ground surface, the sand or aggregate material will not be compacted with vibration equipment. The pressure placed on the existing ground surface must not exceed 7.88 pounds per square inch (psi).
- At least two feet of fill material should be placed over the sand or aggregate. The minimum depth of fill will depend on the size and weight of equipment to be used in the temporary construction area. To avoid damage to the original ground surface, the fill material will not be compacted with vibration equipment. The pressure placed on the existing ground surface must not exceed 7.88 pounds per square inch (psi).
- At the completion of the project, the fill material will be removed in a manner similar to which it was placed and will ensure that the area is not subject to compression or other disturbance during removal. The equipment removing the fill material will not run on the original ground surface during the removal process.
- The geotextile material will be removed by hand.
- The area should be reseeded using an approved PennDOT seed mixture, according to the provisions of the contract.

NOTE: The recommended three feet of material to be placed over the geotextile would be adequate to cover the worst case scenario in regards to soil type and its moisture content, and the size of equipment to be used. The depth of fill material may be reduced if the appropriate compaction analyses are conducted for each individual situation and the pressure increase will not exceed 7.88 pounds per square inch (psi).

If artifacts are potentially located within a depth of six inches of the existing ground surface, extra precaution shall be taken to minimize foot traffic directly on the area. When artifacts are potentially located within six inches of the existing ground surface, the geotextile shall be placed onto the area first, to the extent possible, ahead of any foot traffic.

The CRP archaeologist assigned to the District should check the environmental document mitigation provisions, found in the Environmental Commitments and Mitigation Tracking System (ECMTS) and the Plans, Specifications, and Estimates (PS&E) package to ensure these conditions are being added to the construction contract.

C. REPLACING A CONTRIBUTING BRIDGE IN AN HISTORIC DISTRICT

When project adverse effects are limited to a bridge(s) that is not individually eligible, but contributes to a historic district, PennDOT shall consult with the other consulting parties to resolve the adverse effect. If there is no prudent and feasible alternative to avoid use of the bridge (as documented in either a Section 4(f) Evaluation or Section 2002 Evaluation), the bridge is the only resource affecting the historic district, and if the consulting parties agree that a context sensitive replacement bridge adequately mitigates the adverse effect, then no agreement is necessary but may be completed at the preference of the CRP in consideration of the views of Consulting Parties regarding the need for a legal agreement. The CRP should check the mitigation provisions found in the environmental document, ECMTS and the PS&E package to ensure the agreed upon context sensitive treatments are being added to the construction contract.

The District CRP will work with the project team and consulting parties on a replacement design that either mimics the appearance of the historic (contributing) bridge or incorporates design elements which are in keeping with the characteristics that make the historic district eligible for the National Register (i.e. a Context Sensitive Design (CSD)). To assist in the development of the historic context and community context of the proposed bridge, PennDOT, the Metropolitan Planning Organization/Rural Planning Organization (MPO/RPO), and the sponsor may choose to complete the [*Context Assessment Form*](#).

In addition, the project design team must commit to the following set of aesthetic principles:

1. Bridge aesthetics is defined as creating a structure that is functional, yet visually appealing and befitting the context; a marriage of engineering and architecture.
2. Aesthetics needs to be considered early in bridge design. Aesthetics is not merely an extension of mitigation actions.
3. Designers incorporating aesthetics as part of CSD need to understand the social function of the bridge, for example whether the bridge is a gateway to a community, within a park, rural historic district, or built environment.
 - While the existing bridge may influence the design of a new bridge to replace it, the existing bridge will be gone and no longer be part of the setting.
 - The existing bridge may be one of a series of similar or dissimilar structures crossing the same location over time, so that the existing bridge may be one of a number of historically authentic designs.
4. The existing bridge may or may not be part of the context. Bridge aesthetics is best done in consultation with the local community.
5. Appearance is influenced by 12 determinants:
 - i. Horizontal and vertical geometry

- ii. Scale and mass¹
- iii. Superstructure types
- iv. Pier placement and span arrangements
- v. Abutment placement and exposed height
- vi. Materials²
- vii. Superstructure shape (including parapets, overlays and railings)
- viii. Pier shape
- ix. Abutment shape
- x. Color
- xi. Texture, ornamentation, and details
- xii. Lighting, signing, and landscaping

The 12 determinants should be considered with regard to social function of the bridge, as part of CSD.

With some exceptions, replacement of bridges on existing location may not offer much flexibility in Determinants i through v. Opportunities for aesthetic design may be limited to Determinants vii through xii, and on occasion Determinant vi. Further guidance may be found in AASHTO's *Bridge Aesthetics Sourcebook* (2010), as well as state-specific guidelines, such as the Ohio Department of Transportation *Aesthetic Design Guidelines* (2000).

D. BRIDGE MARKETING

In an effort to preserve some of Pennsylvania's historic bridges, the Commonwealth markets them to outside groups. In the past, PennDOT has placed some of the historic bridges with state parks, rails to trails, and university campuses, and is actively seeking more opportunities for adaptive reuse. When a new owner can be found, and the project is funded by FHWA, the new owner can be reimbursed by PennDOT for up to 80% of the costs of demolition to facilitate the moving and/or preservation of the bridge.

NOTE: According to an August 18, 1999 Memorandum from FHWA, 23 U.S.C. Section 144(o) provides for the reasonable costs associated with actions to preserve, or reduce the impact of a project on the integrity of historic bridges. a preservation covenant may be requested by PHMC.

¹Although scale and mass is typically understood as an aesthetic visual quality rather than a design element or determinant, we believe it to be as important a determinant of appearance as the others.

²The basic material a bridge is constructed from also influences its appearance, primarily in the differences between steel and concrete, which are the two primary mediums currently used. This effect on appearance is more substantial and pervasive than the effect of surface textures (Determinant xi). To a great extent the choice of steel or concrete has a direct impact on Determinants i, iii, vii, and x.

State owned bridges are first offered to other state agencies, then to municipalities in their region, then to the public through the state surplus process at PennDOT of General Services (DGS).

The following steps are taken to market a bridge owned by the Commonwealth:

1. Develop MOA or LOA between FHWA or US Army Corps of Engineers (USACE) and PHMC stipulating bridge marketing as a mitigation measure:

A project involving the replacement of a National Register of Historic Places eligible or listed (and marketable) bridge (typically metal truss) advances in project development to execution of a LOA or MOA to fulfill the requirements of Section 106. The LOA or MOA will stipulate that the bridge be marketed for adaptive reuse by a party willing to preserve the bridge.

2. Advertise bridge on bridge marketing website and notify potential groups:
 - a. District will notify the Bureau of Project Delivery Cultural Resources Unit to place the bridge on its bridge marketing website. (See *Figure X-1*.)
 - b. District provides photograph and description of bridge for websites along with anticipated let date.
 - c. The Cultural Resource Unit will also check its list of groups looking for a bridge to see if the bridge is of an appropriate length and if the project schedule could accommodate the schedule of the group.
 - d. The Cultural Resources Unit will notify any groups, as appropriate, of the impending availability of the bridge and impending surplus bid process (for state owned truss bridges).
 - e. District will notify Section 106 consulting parties.
 - f. For locally owned bridges, the District should notify area historic and trail groups. For state owned bridges, DGS will notify area historic and trail groups, among others.
 - g. PennDOT will request non-binding letters of interest from groups interested in the bridge, allowing a 60 day response time.
 - h. PennDOT will provide DGS the names/addresses of any groups that have expressed interest in a state owned bridge prior to start of surplus process.
 - i. PennDOT will work with bridge owners when contacted regarding a locally owned truss bridge.
3. The Cultural Resources Unit fills out a DGS State Surplus Property Form and submits to Bureau of Office Services. The Cultural Resources Unit also completes the Disposition Form in the electronic DGS Disposition System.

- a. The Cultural Resources Unit will work with the districts to complete the Surplus Bridge Form and will send to Bureau of Office Services who will forward to DGS.
 - b. PennDOT will update its website to note when a bridge has started the surplus process and will refer interested parties to DGS's surplus bridge web page.
4. DGS Institutes the Surplus Process to state agencies:
- a. In compliance with Pennsylvania's surplus property law under Section 510 of the Administrative Code (71 P.S. Section 190), DGS first offers the (state owned) bridge to state agencies along with a special provision requiring reuse (i.e. bridge cannot be used for scrap).
 - b. DGS will contact state agencies as with its standard pre-bid offering of surplus property before opening for bid.

NOTE: There will be 2 different special provisions: one for bridges being replaced with federal funds (provision will reference 23 U.S.C. Section 144(o)) which includes the requirement that the party: 1) maintains the bridge and the features that give it its historic significance and 2) assume all future legal and financial responsibilities for the bridge. For bridges being replaced without federal funds, the provision will omit reference to 23 U.S.C. Section 144(o) and will instead state that a preservation covenant may be requested by PHMC.

5. A 15-day response time to be allowed for the state agency surplus bid process.
6. DGS Institutes the Surplus Bid Process to Counties and Municipalities:
- a. If no state agency has bid on the bridge, DGS then offers the bridge to counties, cities, boroughs, incorporated towns and townships (in compliance with Pennsylvania's surplus property law under Section 510 of the Administrative Code (71 P.S. Section 190)).
 - b. DGS will provide written notice to the municipalities in the District in which the bridge is located. This offering will also include one of the two Special Provisions requiring reuse (i.e. bridge cannot be used for scrap).
 - c. A 30-day response time is to be allowed for the surplus bid process. If more than one entity bids on the bridge, it will go to the municipality nearest the bridge.
7. DGS institutes the Public Surplus Bid Process:
- a. If no state or local authority bids on the bridge, DGS proceeds to offer the bridge to the public.
 - b. DGS will first notify all parties that PennDOT provided to DGS as being interested in the bridge of the anticipated bid opening.
 - c. A 60 day response time will be allowed for the public bid process.

8. DGS Office of Chief Counsel (OCC) to develop Legal Agreement with the winning bidder: DGS OCC will work with PennDOT OCC to develop a legal agreement which:
 - a. States the requirement to preserve the bridge in accordance with 23 U.S.C. Section (144)(o) for bridges being replaced with Federal Funds; otherwise a preservation covenant will be included in the legal agreement if it was agreed to by the successful bidder.
 - b. Includes a statement of liability transfer.
 - c. Includes a requirement for the purchaser to acquire all necessary permits.
 - d. Includes a provision for the transfer of federal demolition dollars (for projects involving federal funds).
 - e. Requires the purchaser to assume all responsibility for disassembly and removal of bridge unless other agreements are made with PennDOT.

Additional Steps:

DGS will work with the PennDOT Project Manager and winning bidder, as necessary, on additional steps to coordinate the bridge relocation.

E. INVOKING A STANDARD TREATMENT

When the Standard Treatment avoids an adverse effect, the CRP will issue a finding of effect and may apply the standard treatment without further consultation with PHMC.

When the Standard Treatment mitigates an adverse effect, the CRP will issue a finding of adverse effect and begin consultation with the other consulting parties to resolve the adverse effect. If the standard treatment is agreed upon by the consulting parties as the appropriate way to mitigate the adverse effect, the CRP will document that consultation in the project file. The CRP will provide the standard treatment and documentation of consultation to the public. No separate MOA or Programmatic Agreement (PA) would be required if the standard treatment mitigates all of the project's adverse effects.

F. DOCUMENTATION

For standard treatments that avoid an adverse effect, no special forms are required to document a standard treatment. The *Above Ground Historic Property Field Assessment and Finding Form* or the *Archaeology Field Assessment and Finding Form* can be used to make the finding of no adverse effect for this class of projects.

For standard treatments that mitigate an adverse effect, in lieu of an executed MOA or PA, the documentation should include:

- The finding of adverse effect for the project.
- A description of the standard treatment that will be implemented.

- How consultation to resolve the adverse effect was carried out amongst the consulting parties. This may include meeting minutes, emails, letters, etc to document how agreement was reached to use the standard treatment.

G. MODIFYING THE LIST OF STANDARD TREATMENTS

PennDOT, in consultation with FHWA, PHMC, ACHP and consulting parties, may develop standard treatments for certain types of historic properties that would be affected by projects reviewed under the Section 106 PA. Once FHWA, PHMC and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix F of the Section 106 PA and this Handbook and may implement it, as appropriate, to resolve adverse effects in accordance with Stipulation III.B.10 of the Section 106 PA. When the standard treatment would apply to properties of traditional cultural and religious significance to Indian Tribes/Nations, PennDOT shall consult with appropriate tribes in developing the standard treatment. A list of standard treatments in effect is found in Appendix F of the Section 106 PA. (If a standard treatment does not meet current design criteria, a design exception may need to be considered. Information in this handbook should not supersede existing design standards as reflected in existing policies and procedures.)

Figure X-1 - Sample Bridge Marketing Text

Gaysport Bridge

Posted July, 2002

The Pennsylvania Department of Transportation, Engineering District 9-0 seeks a party to acquire the historic Gaysport Bridge (SR 2014 Plank Road Street over Juniata River Beaverdam Branch). This single span metal truss bridge is 141 foot long and located in Hollidaysburg Borough. It is an example of a “Pratt thru truss” with pin connections – a type that was common in the region but not in Blair County. It is an example of a technology that was a standardized design that came to dominate bridge technology by 1895. This bridge is slated for replacement. Although it is an example of an increasingly rare historic bridge type, it was not recommended National Register eligible in the statewide bridge survey.

PennDOT will transfer ownership of this bridge to a responsible party for removal to a new location. If your organization is interested, please contact Jonathan E. Daily, PennDOT Architectural Historian, District 9-0 at 814-696-7153. The owner will be responsible for rehabilitating the bridge and assuring its long term maintenance.

Bridge Dimensions:

Length: 141 feet (43 meters)

Width: 16 feet (4.9 meters)



XI. PERMITTED PROJECTS UNDER SECTION 106 OR THE STATE HISTORY CODE

A. US ARMY CORPS OF ENGINEERS PERMITS

Note: Section A represents a draft standard operating procedure that is currently in review by the US Army Corps of Engineers (USACE). Although not approved by the USACE, it nevertheless represents the best available guidance for PennDOT-funded projects (Ira Beckerman, Cultural Resources Unit Head, August 10, 2012).

1. Reason for a Standard Operating Procedure (SOP)

For state funded PennDOT projects, Section 106 of the National Historic Preservation Act is most commonly triggered when there is an individual USACE permit issued or when there is a SPGP-4 Category III review. In order to comply with Section 106, and the implementing regulations found at 33 CFR 325-Appendix C, the USACE and PennDOT agree that these standard operating procedures will be followed.

2. Authorization and Definitions

Section 404 Authorization

The USACE has authority to regulate Waters of the United States through the Clean Water Act, Section 404 which states:

“No person shall discharge any dredged or any fill material into the waters of the United States, without first obtaining a written permit.”

Where Waters of the United States and dredged and fill material are defined as:

Waters of the United States: “All waters which are currently used, or were used in the past, or may be susceptible to use as in interstate or foreign commerce; all interstate waters including interstate wetlands; other waters, such as intrastate lakes, rivers and streams that the degradation or destruction could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the U.S.; tributaries of waters identified as waters of the U.S.; the territorial seas; and wetlands adjacent to waters identified previously.”

Dredged Material - “A material that is excavated or dredged from the waters of the United States.”

Fill Material - “Any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a water body.”

Section 10 Authorization

Section 10 (33 U.S.C. 403) establishes permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States, which covers construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition or capacity of those waters. Actions requiring Section 10 permits include structures (e.g., piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, or excavation, filling or other modifications to the navigable waters of the United States.

Activities requiring Section 10 authorization, generally, due to the very nature of the activity, will require a Section 404 Permit. Section 10 authorizations, when required, are issued as part of a Section 404 Permit. A list of navigable waters within Pennsylvania that require Section 10 Authorization is included in Appendix A.

Permit Area

In general, the USACE has jurisdiction over all construction activities in tidal and/or navigable waters, including adjacent wetlands, shoreward to the mean high water line and in other areas such as non-tidal waterways, isolated wetlands with a hydraulic connection to navigable water, forested wetlands, and lakes. The limits of jurisdiction are defined below:

The limits of jurisdiction in non-tidal waters:

1. In the absence of adjacent wetlands, the jurisdiction extends to the **ordinary high water mark**. Where the **ordinary high water mark (OHWM)** is the point on the bank or shore up to which the water, by its presence and action or flow, leaves a distinct mark indicated by erosion, destruction of or change in vegetation or other easily recognizable characteristic.
2. When adjacent wetlands are present, the permit area extends beyond the ordinary high water mark to the limit of the adjacent wetlands.
3. When the Water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

The limits of jurisdiction in tidal waters (i.e., Lake Erie):

1. Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water which is referred to as the **Mean High Water Line (MHWL)**. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

As part of the standard operating procedures, PennDOT will establish the permit area early in the project.

Project Activities outside of Permit Area

For purposes of compliance with Section 106 for USACE-permitted projects, the Federal undertaking is limited to activities taking place within the Permit Area (see 33 CFR 325.1.g). At the scoping field view, the scoping field view team, in coordination with USACE staff, will establish the likely Permit Area.

Any effects to historic resources (as defined under Title 37 of the State History Code) within the PennDOT-defined project's area of potential effect but outside of the USACE Permit Area will be coordinated between PennDOT and the Pennsylvania Historical and Museum Commission (PHMC) under the State History Code.

For projects that either involve historic resources outside of the Permit Area or do not involve an individual USACE permit, PennDOT will follow the process covered under the State MOU executed October 12, 2011 (see *Appendix 2*) for consistency. The process is parallel to the process used for Federal Highway Administration (FHWA)-aid projects. Because there is no Federal nexus for these projects, no USACE involvement is anticipated.

3. Standard Operating Procedures

There are four basic types of permit actions:

Group 1

- Activities Authorized under PASPGP-4 as Category I or II.
- Activities Authorized under PASPGP-4 as Category III.

Group 2

- Category III Activities Elevated to USACE Individual Permit.
- Activities Authorized under an Individual USACE Permit.

Group 1 actions are reviewed by the Department of Environmental Protection under statewide special general permit PASPGP-4. Group 2 actions are reviewed by the pertinent USACE District office.

Common to all actions is the need to define a permit area.

During PennDOT's Preliminary Design phase, the PennDOT Cultural Resources Professionals (CRPs) will scope projects for their anticipated effects. For Group 1 actions, the CRPs will coordinate with the design team to develop an estimated permit area.

For Group 2 actions, PennDOT's effort will depend on the individual USACE District that has jurisdiction over the project to develop the permit area.

Pittsburgh and Baltimore USACE Districts

For Pittsburgh and Baltimore Corps Districts, The CRP and Environmental Manager will work with the relevant USACE District to satisfy a preliminary permit area.

Philadelphia USACE District

For the Philadelphia District, the protocol below will be used:

The Preliminary Permit Area Form will be used for submission to the USACE and at a minimum will contain the following information:

1. *Project location, include SR, Segment, Offset, and Section as applicable, street name, municipality and county, coordinates in decimal latitude and longitude, and distance from known intersections or named location;*
2. *Description of the proposed project including specifics of proposed work within the regulated area; include as much detail as is available;*
3. *Plans showing a Preliminary Permit Area, encompassing the proposed work and any limits of waterbodies and wetlands; work includes areas that may be required for project staging or layout, e.g. grading, temporary stockpiles, staging areas, dewatering areas, detention basins and temporary access roads;*
4. *A completed PNDI and all correspondence that may have been received from any resource agency concerning the PNDI survey;*
5. *Locations of any known listed or eligible or any potentially eligible historic structures, sites or districts.*

The completed form and all attachments will be sent electronically to the USACE with an e-mail request for concurrence with the Preliminary Permit Area.

Within 5 business days after receipt of the request, the USACE will review the material and return either a concurrence with the Preliminary Permit Area or inform PennDOT of the need for additional information or the need to conduct a field inspection. This Preliminary Permit Area will be used for completing studies and determinations as required for the Section 106 Coordination. Unless there are substantial changes in the proposed work, it is expected that the Preliminary Permit Area will not need to be redefined; however, if the Preliminary Permit Area does need to be redefined then there may be a need to reinitiate the Section 106 process.

In all USACE Districts, any effects to historic resources (as defined under Title 37 of the State History Code) within the PennDOT-defined project's APE but outside of the Preliminary Permit Area will be coordinated between PennDOT and PHMC under the State History Code using the procedures included in the State MOU (see ***Appendix 2***).

Section 106 Coordination

The process to complete Section 106 investigations and recommendations will depend both on the Group of action and the individual USACE District within which the project resides.

For all Group 1 actions where activities are authorized under PASPGP-4 as Category I or II, USACE coordination will not be required unless the project is elevated to an Individual Permit as outlined in Classification C. The project will be coordinated following Chapters III – VII and XII of this handbook and the associated Administrative Procedures. PennDOT will document the Section 106 findings through the Environmental Document (ED) under Part B, Section A-4, either as an “Exempt Project Activity” or as a Finding of No Effect or No Adverse Effect, using one of the following special forms for USACE findings:

- [USACE/PennDOT Archaeology Field Assessment and Finding Form](#)
- [USACE/PennDOT Above Ground Historic Properties Field Assessment and Finding Form](#)
- [USACE/PennDOT Combined Field Assessment and Finding Form](#)

Pittsburgh and Baltimore USACE Districts

For the Pittsburgh and Baltimore USACE Districts, (Group 1) activities listed as Category III under the PASPGP-4 permit as outlined in PASPGP-4, Part IV.C will receive a project specific review by the USACE District to verify that no more than minimal adverse environmental impacts would occur. Any activity that might adversely affect a property eligible for listing in the National Register of Historic Places will be reviewed under Category III. If the project is Category III for a reason other than related to potential adverse impact to historic properties, then PennDOT will follow Section 106 and document the Section 106 findings through the Environmental Document (ED) under Part B, Section A-4, either as an “Exempt Project Activity” or as a Finding of No Effect or No Adverse Effect, using the special forms for USACE findings (see links above).

For Group 2 actions in the Pittsburgh or Baltimore USACE Districts, other than for projects having an adverse effect to historic resources, PennDOT will follow Section 106 and document the Section 106 findings through the Environmental Document (ED) under Part B, Section A-4, either as an “Exempt Project Activity” or as a Finding of No Effect or No Adverse Effect, using the special forms for USACE findings (see links above).

PennDOT will solicit consulting parties, using the Project PATH system. Consulting parties will request consulting party status from PennDOT, using the [Section 106 Consulting Party Response Form](#). PennDOT will approve consulting parties and forward a copy of that approval to the USACE Pittsburgh or Baltimore District. If PennDOT does not believe that an interested party does not meet the test of consulting party status, the CRP will forward the request and PennDOT recommendation to the USACE. The USACE will determine whether the interested party meets the test of a consulting party and notify the interested party directly, copying PennDOT.

Project PATH will continue to be the main method for providing document access to the agencies, consulting parties, and the public. The CRPs will post the [Project Early Notification/Scoping Results Form](#) and subsequent documentation on Project PATH. Should the project warrant solicitation of consulting parties, the CRPs will use Project PATH to conduct those solicitations and notifications.

Philadelphia USACE District

For the Philadelphia USACE District, activities listed as Category III under the PASPGP-4 permit as outlined in PASPGP-4, Part IV.C will receive a project specific review by the Philadelphia District to verify that no more than minimal adverse environmental impacts would occur. CRPs are asked to coordinate with Central Office Cultural Resources Unit for guidance on how to complete Section 106.

For Group 2 actions in the Philadelphia USACE District, CRPs are asked to coordinate with Central Office Cultural Resources Unit for guidance on how to complete Section 106.

Tribal Consultation

While USACE is developing a protocol with Federally-recognized tribes, PennDOT will continue to send information and solicit consulting party status following its existing Letters of Understanding, protocols, and Tribal Consultation Handbook (PennDOT Publication 591). Because of the government-to-government relationship Federally-recognized tribes have with the Federal government, at any time they can elevate any issue to USACE for any reason, and request direct consultation.

Conditional No Adverse Effect

For any project where the finding of no adverse effect is conditioned on completing certain stipulations, PennDOT will ensure that these stipulations are outlined in the finding of effect and that a written concurrence is received by the SHPO.

Adverse Effect

When there is an adverse effect that cannot be avoided, USACE, consulting parties (including PennDOT), and the SHPO will work out how these effects will be mitigated. This resolution, represented either as a statement or draft MOA, is reviewed by the SHPO and approved by USACE prior to a public/Consulting Party comment period and circulation of the MOA for signature. CRPs are asked to coordinate with Central Office Cultural Resources Unit for guidance on how to complete the MOA.

B. HIGHWAY OCCUPANCY PERMITS

Highway occupancy permits (HOP) are issued by PennDOT under the provisions of Chapter 441 (<http://www.pacode.com/secure/data/067/chapter441/chap441toc.html>) and procedures outlined in PennDOT's *Highway Occupancy Permit Guidelines* (Publication 282) and in accordance with the State History Code MOU (see *Appendix 2*). The applicant is responsible for coordination related to compliance with the State History Code.

HOPs are subject to review under the State History Code. Because of the high volume of HOPs issued by PennDOT and the low potential to affect historic properties in most cases, the PHMC has agreed to limit their review to the following.

- a) When the permitted work will include construction of an auxiliary lane or other widening of the improved area, or if additional right-of-way will be required.
- b) 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, or if a historic building, structure, or district will be affected.

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.

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 is present in the right-of-way and 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.

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XII. DOCUMENTATION TYPES, STANDARDS AND CHECKLISTS

This section provides, in a checklist format, the information that must be included in the various reports and forms used to document recommendations and findings. The section also discusses standards for preparation of documents in electronic format.

A. DOCUMENTATION FOR ABOVE GROUND HISTORIC PROPERTIES

Above ground historic property reports and forms prepared for PennDOT projects should be consistent with Pennsylvania Historical and Museum Commission (PHMC) Bureau of Historic Preservation (BHP) standards. The goal of each report or form is to clearly and succinctly convey the information needed by PennDOT to make timely and informed decisions. Draft reports/forms should be prepared and distributed electronically on CD or FTP server, or via email if the files are not large. Final reports for the PHMC must include a paper copy on acid-free paper as well as an electronic version on CD or FTP server. Pennsylvania Historic Resource Survey (PHRS) forms must be filed electronically with the BHP Geographic Information System (GIS) coordinator, and a paper copy must be printed on acid-free paper.

1. Reconnaissance Survey Report Requirements

Reconnaissance Survey Reports (sometimes referred to as “Windshield Survey Reports”) are typically conducted for large projects and are often combined with an Historic Context Report (see *Chapter VII*). Minimal report requirements are:

- ER# (if available)
- Table of contents
- List of illustrations
- Abstract or summary of survey efforts
- A statement of research methodology
- Reference to applicable federal and state laws and regulations
- Project Description
- Description and map of the initial Area of Potential Effect (APE) (on a U.S. Geological Service (USGS) 7.5 minute Topographic Quad map); if this is the first submission on the APE, the APE must be justified.
- USGS 7.5 minute Topographic Quad map containing the previously determined eligible, listed and not eligible properties and the locations of other historic properties located during background research. Properties should be coded according to eligibility status and/or likelihood of meeting National Register of Historic Places (NRHP) criteria/integrity requirements. For densely developed areas plot all properties on a municipal base map.

- Summary of the findings of the reconnaissance survey including descriptions of the types of properties most commonly found within the initial APE.
- Chart or table of newly surveyed properties with location (address), NRHP type classifications, historic function (if possible), styles, age estimates, and initial NRHP recommendation. The NRHP recommendation should be keyed according to whether full PHRS forms are needed to determine eligibility or whether a short form is suggested. If possible, thumbnail photographs of inventoried properties should be included.
- Chart or table of the previously evaluated and/or surveyed properties with location, NRHP type classification, historic function, styles, age, PHMC Key number or County survey number, and NRHP determination (if available). If possible, thumbnail photographs of properties should be included.
- Qualifications of researchers

2. Historic Context Report Requirements

Historic Context Reports are typically conducted for large projects and are often combined with a Reconnaissance Survey Report (see *Chapter VII*). Minimal report requirements include:

- ER# (if available)
- Table of contents
- List of illustrations
- Abstract or summary of survey efforts
- A statement of research methodology
- Reference to applicable federal and state laws and regulations
- Project Description
- Description and map of the initial APE (on a USGS 7.5 minute Topographic Quad map); if this is the first submission on the APE, the APE must be justified.
- Historic context narratives with sufficient current and/or historic photographs of the APE to illustrate contexts; the contexts should be organized chronologically
- Concise statements on what a property must possess to be considered eligible under a particular context
- Copies of historic maps with the APE highlighted
- Bibliography
- Qualifications of researchers

3. Pennsylvania Historic Resource Survey (PHRS) Forms

Completion of PHRS forms should be in accordance with BHP standards found at <http://phmc.info/historicpreservation> except where noted below. NRHP Bulletins should also be consulted for how to research properties and how to evaluate properties according to National Register Criteria (see <http://www.nps.gov/history/nr/publications/> and *Chapter VII* for more

information). PHRS forms may be stand-alone or combined in an Identification and Evaluation Report (also known as an Historic Resource Survey and Determination of Eligibility Report; see *Chapter VII*). Important considerations to keep in mind include the following:

- PHRS forms for properties recommended as eligible must include indication of which NRHP Criterion(ia) the property is eligible under, the level of significance (national, state, or local), a clear justification of eligibility, and a defended period of significance.
- PHRS forms, regardless of whether or not a property is recommended as eligible for the NRHP, must include an explanation of the application of the seven (7) aspects of integrity (location, design, setting, material, workmanship, feeling, and association).
- PHRS forms for eligible properties will generally include a boundary description, justification, and map. However, there may be cases where only a partial boundary description and map is required for the project. If this is the case, clearly explain the limitations of the boundary information.
- PennDOT will generally not require information on interiors of properties, including descriptions and floor plans. An exception to this might be for a Transportation Enhancement project, or publicly accessible buildings, where information on interior layouts, features and alterations has direct bearing on the project.

4. Identification and Evaluation Reports (Historic Resource Survey and Determination of Eligibility Report)

Reports may be combined with an Effect Report under certain conditions (see *Chapter VII* for more information). Eligibility Reports must include the following:

- ER# (if available)
- Table of contents
- List of illustrations
- Abstract or summary of survey and identification efforts
- A statement of research methodology
- Reference to applicable federal and state laws and regulations
- Status of archaeological studies
- A project description
- A description of, and justification for (unless previously established) the APE; also include a USGS 7.5 minute Topographic Quad map defining the APE
- A description of, and table or list showing, all above ground resources within the APE whose eligibility was previously established (including dates and PHMC Key No.)
- A description of, and table or list, showing all recommendations of eligibility (this can be combined with the table or list showing previously determined resources)
- USGS 7.5 minute Topographic Quad map, or other appropriate map, denoting the previously determined eligible, listed and not eligible properties and the locations of additional historic properties identified (newly evaluated properties). Properties should

be coded according to eligibility status and/or eligibility recommendation. For densely developed areas plot properties on a municipal base map

- Sufficient illustrations and/or photographs to illustrate the nature of the APE and National Register recommendations for properties
- Bibliography
- List of preparers and their qualifications
- An original set of PHRS forms for properties being evaluated. A loose set of PHRS forms should also accompany the report. This set will be for the PHMC records room.

Note: The report should not duplicate all the narrative text from the PHRS Forms in the body of the report.

Note: Reports must be clearly organized and cross indexed. Readers must be able to connect the survey form, the map location, the photograph and the inventory list.

- Copies of PHRS forms for previously identified properties that are within the APE, unless previously provided through a reconnaissance survey report or deemed by the Cultural Resources Professional (CRP) to be unnecessary.

Note: A narrative on the local and specific historic contexts in the APE should be included unless provided in a separate report or unless there are too few properties to warrant historic contexts separate from the narratives to be provided in the PHRS.

5. Determination of Effect Reports

Effect Reports may sometimes be combined with Identification and Determination of Eligibility Reports (see *Chapter VII*). Effect Reports, when needed, must include:

- ER# and other project information including county, State Route (SR), Section, and project name.
- Table of Contents.
- List of Illustrations.
- Abstract which contains a project description, a summary of the project status, relevant laws and regulations, a summary of historic properties in the APE, and a summary of effects. For large numbers of properties it is helpful to provide a list or table of resources in the APE.
- Project Purpose and Need.
- Description and Map of the APE, including, if applicable, a description of how the APE changed; NRHP eligible or listed properties should be indicated on the APE Map as well as a key to photographs.
- Summary of Alternatives considered or under consideration (must include discussion of consideration of a rehabilitation alternative for NRHP eligible bridges) and a summary of effects. Include any proposed measures or alternatives that were considered to avoid or to minimize the effects resulting from the project. The engineering and environmental decisions resulting in the selection of a preferred alternative must be documented,

although it is not necessary that the project has reached the point of having a preferred alternative to circulate a report on potential effects.

- Summary of public involvement and consulting party coordination to date and anticipated public involvement and consulting party efforts.
- Description of historic properties in the APE and efforts to identify historic properties; this should not include copies of PHRS forms.
- Summary of the status of archaeology.
- Summary of the application of the definition of effect to historic properties in the APE; this summary can be placed in a table if necessary or desired for clarity.
- Summary of the application of the criteria of adverse effect to any property that may be affected; this summary can be placed in a table if necessary or desired for clarity.
- Summary of efforts to avoid and, where avoidance is not possible, minimize effects to historic properties.
- Relevant previous correspondence with PHMC, the public, and consulting parties.
- Project plans and specifications to the degree that they are needed to convey affects and/or avoidance of effects.
- Sufficient photographs of historic properties to be affected with captions which convey proposed changes where possible.
- Qualifications of researchers.

6. Feasibility Analysis Reports

Feasibility Analysis Reports must be written by, or involve the assistance of, a bridge engineer who has an understanding of what makes the bridge historic and the flexibilities allowed by AASHTO. The preparer should coordinate with the CRP to ensure concise but thorough documentation. Other readily available documents, e.g. eligibility reports, can be referenced. It is important that the document be based upon a defensible purpose and need statement that takes into account the requirements of Section 106 and the FHWA's Historic Bridge Program (Title 23, Section 144(o)). **The purpose and need statement cannot preclude consideration of the rehabilitation alternative.** The purpose and need statement should exclude extraneous information that is not related to purpose and need.

Feasibility analysis reports must include the following components, preferably in this order:

Introduction – Containing the following information captured in no more than 2-3 pages. These will primarily be bulleted items or data fields (versus paragraphs):

- ER# (if available).
- Table of contents.
- List of illustrations.
- BMS#, Bridge Structure #.

- Location Information including County, Township, S.R. or Local Road, and Location Description.
- Ownership.
- Bridge Type and Design, Length, Number of Spans, Length of Main Span, Deck Width.
- Description of Bridge including Eligibility Status, degree or level of significance, explanation of significance and significant features. Explain why the bridge is significant and which features cannot be altered without affecting significance.
- Enumeration of any other historic properties in APE; this should be brief.
- A map (USGS and/or aerial) showing all relevant constraints. Everything should be identified that will be discussed later in the report. Note: This is not an alternatives analysis. Constraints should be identified only to the degree they affect the consideration of rehabilitation.

Roadway and Site Information

- Type of service (e.g. one lane bridge on two lane road), width of approaches, vertical clearance (if applicable), ADT (including source, date of ADT and percentage truck), shoulders, Functional Classification
- Crash History
- Setting Description
- Safety Features or deficiencies
- Bypass Proximity
- Summary of Performance and any Geometric or Hydraulic Deficiencies
- Land Use including anticipated changes

Project Purpose and Need

- Preparer should coordinate with the NEPA document preparer to ensure consistency in purpose and need. Further guidance on purpose and need, can be found in the *Needs Study Handbook* (Publication 319) and on FHWA's website.
- Viable Purpose and Need Statement. Note: the purpose and need statement cannot preclude a sincere consideration of rehabilitation. Explain the problems the project is trying to solve. Exclude extraneous information that is not truly related to purpose and need.
- Include emergency vehicle use and need and school bus use/need. Distinguish desires from needs. A request from an EMS or school system not to have a restricted bridge should be treated like a desire. Needs of emergency operations or school buses must be demonstrated; explain if there is a demonstrable safety or efficiency issue, such as a significant detour or delay that cannot be sufficiently addressed through rehabilitation.

- Include relevant information related to agricultural use/needs, including whether or not a safe alternative is available within a reasonable distance for farm vehicles which cannot utilize the bridge at current widths.

Condition and Load Sufficiency Information

- BMS Condition Code Ratings (superstructure, including deck, and substructure), and Load Ratings (Inventory and Operating, including method of acquiring such as BAR7).
- Load Posting.
- Summary of Structural Deficiencies. Note: Statements such as “Bridge is in poor condition so it cannot be rehabilitated” or “Bridge is structurally deficient” is not acceptable. Being structurally deficient is not justification for replacement as the only viable alternative.

Rehabilitation Evaluation

- Provide detailed analysis of the rehabilitation alternative(s) including an explanation of whether the bridge can be made adequate for the intended use of the bridge. Include how the measures to make the bridge adequate would affect the character defining features (i.e. can the bridge be rehabilitated to meet needs without an adverse effect). Include what is controlling the rating. Consider bypass with new bridge on new alignment where appropriate and other reasonable rehabilitation alternatives. Exclude alternatives that do not involve the rehabilitation of the bridge such as a “Do Nothing” alternative. Consider widening alternatives to the degree they are feasible; consider the effect of widening on historic integrity. Material testing may be needed to justify conclusions, particularly for cast or wrought iron structures.
- Explain whether any geometry or hydraulic problems can be addressed or mitigated (e.g. traffic control measures).
- Factor in the degree of significance and location (e.g. ADT, setting, whether on a low volume or very low volume road) into determining what is adequate for needs.
- Give consideration to “Feasibility” and “Prudency” as defined in the AASHTO publication Guidelines for Historic Bridge Rehabilitation and Replacement. While this document is produced primarily for purposes of Section 106 (and these are 4(f) terms) an adverse effect can only be avoided if it is reasonable, and this includes costs. Determining prudency, particularly from a long-term cost perspective, must consider long term maintenance costs tempered by an understanding of the nature and degree of historic significance.
- Explain how/if Smart Transportation was integrated into the analysis.
- Include recent photographs of the bridge and environs.
- Graphics to support analysis and findings is desirable (e.g. elevation of a truss highlighting deficient members and whether or not they can be supported/repaired or have to be replaced entirely).

Appendix Items

- Relevant previous correspondence (PHMC, public, county or municipal officials, etc.) including any known information regarding level of public interest in preserving the bridge.
- Additional Supporting Information. Note: BMS Inspection Reports or excerpts and engineering calculations are generally not required.

B. DOCUMENTATION FOR ARCHAEOLOGY

Archaeological reports and forms prepared for PennDOT projects should generally be consistent with the BHP report standards. The goal of each report or form is to clearly and succinctly convey the information needed by PennDOT to make timely and informed decisions. Draft reports/forms should be prepared and distributed electronically on CD or FTP server or via email if the files are not large. Final reports for PHMC must include a paper copy on acid-free paper as well as an electronic version on CD or FTP server.

1. PASS Forms

Pennsylvania Archaeological Site Survey (PASS) forms can be found at the PHMC BHP website <http://phmc.info/historicpreservation> under Forms and Guidance. The form is generally self-explanatory and should be filled out as completely as possible. Informal guidance on preparing PASS forms is also available at the Society of Pennsylvania Archaeology website (<http://www.pennsylvaniaarchaeology.com>). If published references, including Cultural Resource Management (CRM) reports, are available for the site, include a complete reference, with the PHMC ER number if available, in the “Published References” field. The PASS form must be filed electronically with the PHMC GIS coordinator and a paper copy must be printed on acid-free paper. A copy will also be included in the archaeological report. For each successive phase of archaeological investigations at a site, the PASS form must be updated.

2. Geomorphology Report

The geomorphology report can either be a stand-alone document or may be an appendix in an archaeology report. The report should include the following:

- ER# (if available).
- Project information including County, SR, Section, and name of project.
- A map of the project APE showing the location(s) of the borings or trenches.
- Soil profiles that represent the range of variability within the APE.
- A description of the landform(s) and soils within the APE.
- A discussion of soil formation processes.
- A discussion on the age of the soils.
- A statement of archaeological potential, when geomorphology is done to assess disturbance or potential for archaeological sites.

3. Predictive Model Report

The Predictive Model Report should include the following:

- ER# (if available).
- Project information including County, SR, Section, and name of project.
- Table of contents.
- A project description.
- A USGS map showing the location of the project.
- A map showing the study area.
- A regional overview of the history and prehistory of the study area.
- A description of the predictive model(s). Predictive models must be developed for both prehistoric and historic archaeological sites.
- The variables used to develop the model(s).
- Maps of the study area that indicate probability for both prehistoric and historic archaeological sites.
- A comparison of project alternatives (if alternatives have already been developed).
- A proposed method for testing the selected alternative.
- PHMC report summary form.

4. Archaeology Sensitivity/Phase IA Report

The Archaeology Sensitivity/Phase 1A Report should include the following:

- ER# (if available).
- Project information including County, SR, Section, and name of project.
- Table of contents.
- A project description.
- A USGS map showing the location of the project.
- A description of the area of potential effect including size of the APE, land use, and area(s) of disturbance.
- Results of the background research including detailed information on the land use history, and a prehistoric and historic context. Copies of historic maps showing the APE and its historical development should be included, as well as any other relevant information.
- An evaluation of the potential for historic and/or prehistoric sites.
- If geomorphological and/or archaeological testing is recommended, the proposed method of testing.
- PHMC report summary form.

5. Record of Disturbance Form

The *Record of Disturbance Form* is used when the APE is found to be completely disturbed as determined by a field view, auger borings, geomorphology, or other means. The form can also be found under Forms and Guidance at the PHMC BHP website, <http://phmc.info/historicpreservation>. The form is generally self-explanatory and should be filled out as completely as possible.

6. Phase I Archaeology Negative Survey Form

The *Phase I Archaeology Negative Survey Form* is used when an archaeological survey is conducted but no archaeological sites are identified. The form can also be found at the PHMC BHP website, <http://phmc.info/historicpreservation> under Forms and Guidance. The form is generally self-explanatory and should be filled out as completely as possible.

7. Archaeology Identification (Phase I) Report (Full Report)

The Archaeology Identification (Phase I) Full Report is used when an archaeological survey identifies sites within the APE. The report should include the following:

- ER # and other project information including County, SR, Section, and name of project.
- An abstract or management summary.
- Table of contents.
- A project description.
- A USGS map showing the location of the project.
- A description of the area of potential effect including size of the APE, land use, and area(s) of disturbance.
- Results of the background research including a prehistoric and historic context. Copies of historic maps showing the APE should be included if available. A statement on the potential for historic and prehistoric sites must be included.
- A discussion of the field methodology.
- A discussion of the testing results.
- A map showing the location(s) of testing. The map should account for all portions of the APE. Shovel test pits (STP) or test units (TU) containing artifacts should be distinguished from those without artifacts. Only those STP/TUs actually excavated should be depicted on the map. Areas not tested due to disturbance or other factors should be coded or labeled on the map.
- Representative soil profiles. When geomorphological testing has been conducted, the soil descriptions should correspond to the terminology used by the geomorphologist.
- A PASS form for each site identified.
-

When a predictive model was developed, an assessment of the reliability of the model and recommendations for modifications to the model recommendations.

- PHMC report summary form.

8. Archaeological Identification and Evaluation (Phase I and II) Report

The Archaeological Identification and Evaluation Report is used when archaeological sites are identified and evaluated for the National Register and the information is presented in a combined report. The report should include the following:

- ER # and other project information including County, SR, Section, and name of project.
- An abstract or management summary.
- Table of contents.
- A project description.
- A USGS map showing the location of the project.
- A description of the area of potential effect including size of the APE, land use, and area(s) of disturbance.
- Results of the background research including a prehistoric and historic context. Copies of historic maps showing the APE should be included if available. A statement on the potential for historic and prehistoric sites must be included.
- A discussion of the field methodology.
- A discussion of the testing results.
- A map showing the location(s) of testing. The map should account for all portions of the APE. Shovel test pits (STP) or test units (TU) containing artifacts should be distinguished from those without artifacts. Only those STP/TUs actually excavated should be depicted on the map. Areas not tested due to disturbance or other factors should be coded or labeled on the map.
- For each archaeological site evaluated, a delineation of the horizontal and vertical boundaries of the site within the APE.
- Representative soil profiles. When geomorphological testing has been conducted, the soil descriptions should correspond to the terminology used by the geomorphologist.
- A PASS form for each site.
- Photographs and/or illustrations and descriptions of any identified features.
- Appropriate graphs, tables and maps to present artifact tabulations, artifact distributions and results of analyses to support the results of the Phase II evaluation.
- Photographs of diagnostic artifacts.
- When a predictive model was developed, an assessment of the reliability of the model and recommendations for modification to the model.

- Recommendation of each site's eligibility to the NRHP, following the guidance provided in the *NRHP Bulletin Guidelines for Evaluating and Registering Archeological Properties* (2000).
- For archaeological sites recommended as eligible for the NRHP, a justification for the recommendation and explanation of the important specific research questions the information from the site may help to answer.
- Recommendations for the potential effects from project implementation.
- If the project can be redesigned to avoid effects to the site(s) a finding of No Historic Properties Affected should be recommended.
- If the site(s) would be affected but can be protected during construction through erection of protective fencing or by other means, then a finding of No Adverse Effect should be recommended.
- If the site(s) cannot be avoided through design modification or otherwise protected during construction, a finding of Adverse Effect should be recommended.
- Make recommendations for minimizing or mitigating the adverse effect. Mitigation measures may include a research design and excavation plan for a data recovery (Phase III), or a proposal for alternative/creative mitigation.
- PHMC report summary form.

9. Data Recovery Excavations (Phase III) Report

The Data Recovery Excavation Report is prepared when archaeological data recovery is undertaken as mitigation for adverse effects to archaeological sites. The report includes both field results and artifact/data analyses.

- ER # and other project information including County, SR, Section and name of project.
- An abstract or management summary.
- Table of contents.
- A USGS map showing the location of the site.
- Background research sufficient to formulate and address specific local and regional research questions.
- A research design with specific research questions posed for the data recovery.
- A discussion of the field methodology.
- A map of the site showing the location of all areas excavated.
- Soil profiles that represent the range of variability across the site. When geomorphological testing has been conducted, the soil descriptions should correspond to the terminology used by the geomorphologist.
- An updated PASS form for each site.
- A discussion of the testing results.

- Photographs and/or illustrations, descriptions, and profiles of features.
- Appropriate graphs, tables, and maps to present artifact tabulations, artifact and feature distributions, and results of analyses. Information from the Phase I and II testing must be included.
- Photographs of diagnostic artifacts.
- Interpretations of the activities and function(s) of the site.
- Placement of the site within the regional context and discussion of the relationship to other sites in the region.
- An assessment of the research questions posed in the research design and a statement on what contribution the site made toward answering these questions.
- A statement on whether the data recovery conformed to the expectations for the site.
- A statement on what new questions were raised.
- PHMC report summary form.

10. Culturally Sensitive Images

Images depicting burials, sacred objects, or other culturally sensitive items should not be reproduced in any archaeological report, unless permission has been granted by the descendent community(ies) (if known), or by the Tribes/Nations in whose ancestral territory the items are located. Existing protocols or Letters of Agreement should be referenced; however, unless there is clear-cut guidance, consultation with the relevant Tribes/Nations should be conducted on a case-by-case basis. District archaeologists will be responsible for balancing scientific goals with respect for the Tribe/Nation's religion. It is strongly recommended that consultation over the discovery of burials also include consultation over photography and reproduction of images at that time.

C. DOCUMENTATION OF PROJECT EFFECTS – COMBINED IDENTIFICATION AND EFFECT EVALUATION

1. No Historic Properties Affected or No Adverse Effect

- *Archaeology Field Assessment and Finding Form* and/or *Above Ground Historic Properties Field Assessment and Finding Form* (can be submitted separately). Any completed reports or PHRS forms should be attached.
- Attachments, as appropriate, to support the finding. An Effect Report may also be prepared for findings of No Adverse Effect but is not required. The Effect Report is generally only prepared for above ground historic properties.

2. Adverse Effects

- *Above Ground Historic Properties Field Assessment and Finding Form* (can be used for above ground historic properties only).
- Attachments, as appropriate to support the finding. Where effect assessments, including efforts to avoid and minimize affects, can be sufficiently documented within the finding form, a separate Effect Report may not be necessary.

D. ELECTRONIC DOCUMENTATION STANDARDS

For the bulk of the electronic documents developed to consult under Section 106, use of the PDF format is required. Documents that have chapters or sections should use the Adobe Acrobat feature that assembles PDF files into a single PDF package, but allows a tab function for each section. Images and maps that are included in the PDF file need to be at a minimum 300 ppi (pixels per inch) or greater, with RGB color (most cameras that use a CMOS or CCD image sensor often operate with some variation of the RGB model), and 8-bit color depth per primary color channel (this is equivalent to 24-bit per pixel, which is fairly standard on most digital cameras). A color scanner at 24-bit color depth would be considered equivalent. Please note that documents that are prepared as part of a National Register nomination must follow the National Register standards, which are more stringent than these. National Register standards are found at: http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.pdf

The following documents will need to be permanently curated, and for these documents, there are specific electronic archival requirements. Consultants are to be advised that in addition to a .PDF format for documentation, archival electronic copies must be provided where warranted. The following documents must be provided for archival storage:

- PHRS Forms
- PASS Forms
- Geomorphology Report – Final Report
- Archaeological Identification (Phase I) Final Report
- Archaeological Evaluation (Phase II) Final Report
- Archaeological Data Recovery Excavations (Phase III) Final Report
- Alternative Mitigation Report – Final

1. Images

All photographs will be generated digitally, either through digital camera or by scanning. The size of each image must be 1200 x 1600 pixels at 300 ppi (pixels per inch) or larger. This will yield a full 300 ppi image at 4 x 5/13 inches. Digital images must be saved in 24-bit per pixel (8-bit per channel) or larger color format, which provides maximum detail even when printed in black and white. When provided as a file for archival storage, images should be saved in a .TIF format.

2. Maps/Drawings

Maps will be provided as TIF format files with a minimum resolution of 300 ppi at 100% of original size. Scaled drawings and line art (black and white, no half tones) will be provided as GIF or TIF format files, with a minimum resolution of 1200 ppi at 100% of original size.

3. Final Report Text

Narrative, including front materials, table of contents, bibliography, etc. is to be provided in its native text programming format. All text must be readable in Microsoft Word Version 2007. Fonts should not be set within the document. Excessive formatting is discouraged.

4. Final Report Forms

PHRS and PASS forms provided as a deliverable are to be created as a Microsoft Access, Version 2007 or greater, file, using the conventions established in the Cultural Resources GIS Database Manual. Attached images should follow the standards set below. A copy of the form file may be obtained from the PHMC, with which the database may be merged to create an image of the completed PHRS Form.

5. Final Report Tables

Simple tables may be produced as part of the text narrative in the format that the narrative is produced. Long or complicated tables should be produced in Microsoft Access and saved as a separate file.

6. Final Report Catalogs

Artifact catalogs should be produced in Microsoft Access, following the conventions established in the PHMC Curation policy.

7. Paper Copies for Curation

One copy of the above referenced archaeological reports must be provided on acid-free paper to the PHMC for long-term curation. Inks used for printing should be water-resistant and stable. A paper copy on acid-free paper of archaeological documentation should be provided to the State Museum as part of the archaeological collections. No additional paper copies need to be provided. Please note that any paper documentation provided as part of a National Register Nomination must meet National Register standards.

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XIII. EMERGENCIES AND LATE DISCOVERIES

If a state or federal emergency has been declared by the Governor or the President, federal funds may be available from two sources: Federal Highway Administration (FHWA) or Federal Emergency Management Agency (FEMA). Both FEMA and FHWA have programmatic agreements (PA) to cover emergency activities in Pennsylvania. In addition, project activities may be exempted under the Main Section 106 PA when federal funds are used.

A. FHWA FEDERAL EMERGENCY RELIEF-FUNDED PROJECTS

The FHWA PA basically divides activities into three groups. Operations to preserve life and property are exempt from the provisions of Section 106 (See 36 CFR §800.12 above). In these instances, if possible PennDOT cultural resources professionals will work closely with field crews to take reasonable measures to avoid, minimize, or mitigate adverse effects, understanding that these actions are exempt from Section 106. Certain other activities, by their nature, are exempt from Section 106. Included in this group are activities to repair roads to pre-disaster conditions, repair of bridge scour, channel cleaning, etc. Finally, non-exempt activities are coordinated with the State Historic Preservation Officer (SHPO) (Pennsylvania Historical and Museum Commission) in a way that mimics the Section 106 steps, but is done in an expedited manner. Under the FHWA PA, PennDOT takes the lead in scoping and coordinating with the SHPO.

For funds that will be utilized from FHWA's Emergency Relief Program (23 CFR §668), procedures for compliance with Section 106 have been agreed-upon in an Emergency Relief Programmatic Agreement (PA) among FHWA, PennDOT, the Advisory Council on Historic Preservation (ACHP) and the Pennsylvania Historical and Museum Commission (PHMC) (*Appendix 9*). The agreement specifies applicable and exempt activities, stipulates procedures for identification, assessment and resolution of adverse effects, sets standards for documentation, and establishes procedures and time frames for consultation. In the event of a declared state or federal emergency, the stipulations of the Emergency Relief PA should be followed.

The Emergency Relief PA is applicable when a state of emergency is declared by the President of the United States or the Governor of Pennsylvania. Projects that will utilize funds from FHWA's Emergency Relief Program qualify for expedited Section 106 review under this PA. The PA has a category of exempt activities that do not require any Section 106 review and includes such activities as repair of roads to pre-emergency conditions, and repair or replacement of traffic lights, signs, road lighting, guiderails, culverts and retaining walls. Non-exempt activities require the District Cultural Resource Professionals (CRPs) to view these projects in the field and assess whether the emergency activities would have an adverse effect on historic resources. The nature of the emergency and how quickly emergency activities will begin will determine the type of consultation and documentation prepared, and the length of the review

period. FHWA, PHMC, and any Tribes/Nations who have signed the PA will receive information concurrently.

Immediate rescue and salvage operations conducted to preserve life and property are exempt from Section 106 review. If possible, the Cultural Resource Team will visit the disaster site and issue an immediate finding of effect in the field. The team will coordinate closely with work crews to avoid, minimize or mitigate adverse effects where possible. Documentation will be prepared and submitted to PHMC within 45 days of the field view, for purposes of the administrative record and for post-event auditing. There is no review period.

When emergency activities will begin within 30 days of the emergency event, documentation and review will follow a highly expedited process. FHWA and PHMC will have seven (7) days to comment on information provided by PennDOT via phone conversations, electronic media, or meetings. PennDOT will provide information on the eligibility of the property(s) affected, the proposed emergency activities, and any measures that would be implemented to take into account the effects of the activities.

Emergency activities undertaken from 30 to 180 days of the emergency event will also follow an expedited process. The PennDOT Cultural Resource Team will submit documentation to PHMC, FHWA, and Tribes/Nations, as appropriate. FHWA, PHMC, and Tribes/Nations will have 15 days to object to a finding of no historic properties affected or no adverse effect. When the effect will be adverse, the Cultural Resource Team will prepare a Commitment Letter (in lieu of a Memorandum of Agreement) describing the resolution of adverse effects. FHWA, PHMC, and Tribes/Nations, where appropriate, will be invited to concur prior to the 15-day period, or, will have 15 days to object to the proposed resolution of adverse effects.

Documentation has been largely streamlined, using forms; however, the findings will need to be made available to the public as well as to the signatories to the Emergency Relief PA. There will be a review of the PA every five (5) years. The PA will be in effect until December 31, 2014, but may be extended by the consent of the signatories.

To implement the FHWA Emergency PA, the District Emergency Relief Coordinator needs to make three decisions:

1. Is this repair action to preserve life and property?
2. Is this repair action temporary or permanent?
3. Do I need to scope this?

The Emergency Relief Coordinator and FHWA make the Emergency Relief funding eligibility determination.

In most cases, the actions for the first few weeks will be to preserve life and property and will be temporary. If the action is truly to preserve life and property, the actions will be exempt from 106 under Stip III.A (of the FHWA Emergency PA).

If the action is temporary to restore and maintain essential traffic, it will be exempt under Stip III.B.10.

Other actions are also exempt under Stip III.B, but must meet certain tests.

The need to scope a project will depend on professional judgment, initial reports from the field, and a check of the CRGIS database. If a project should be scoped, scope it and document the reasoning in the file (see below). If the project does not need to be scoped, add a sentence on why to the file.

The Emergency PA is very liberally drawn and most temporary actions should end up being exempt. However, Section 106 is not waived for Flood Projects under any state or federal declaration. PennDOT is using the PAs available to comply with Section 106. It happens that many actions will be exempt, but that still should be the result of application of the PAs and some thought.

Most of the temporary actions will be documented as a CE Level 1a. There is no place on the CE form to indicate what Stipulation of the Emergency PA was used. For tracking purposes, a spreadsheet will be developed by Central Office to track all flood projects. A column is set aside to indicate what exemption was used for the temporary work. The CRPs should be able to enter the appropriate stipulations under this column, or, provide the appropriate stipulations to the environmental manager to be entered. This spreadsheet will be the primary means by which we report application of the Emergency PA (or Section 106 PA) to FHWA and the SHPO.

As these projects get cleared under NEPA, the CRPs should keep a log of each project listing whether it was field viewed and why, what PA was used, what stips were used, who cleared the project on what date. This will be useful backup when PennDOT seeks Federal funding later.

If the repair action is only temporary, then another CE will need to be prepared for the permanent work. There will be a column added to the spreadsheet for Section 106 for permanent work for flood projects to be filled out later if a permanent repair or replacement is needed. The Section 106 process for permanent repairs will still be under the Flood Emergency PA if we are using FHWA ER funding or FEMA funding, but the process will look more like our normal Section 106 process.

B. FEMA EMERGENCY FUNDED PROJECTS

The FEMA PA (*Appendix 10*) also divides activities into the same three groups: operations to preserve life and property; programmatic allowances (similar to the exemptions in the FHWA PA); and, standard review. Under the FEMA PA, FEMA takes the lead in coordinating with the SHPO, although PennDOT can initiate Section 106 steps. The following Special Consultation Forms and associated field assessment forms have been developed for FEMA PA project coordination:

- [*PennDOT Emergency Projects Section 106 Consultation under FEMA Form*](#)
- [*Section 106 under FEMA Field Assessment and Recommendations for Emergency Projects Form*](#)

- [*PennDOT Section 106 under FHWA Field Assessment and Finding for Emergency Projects Form*](#)

Local municipalities that own non-Federal aid roads that are eligible for FEMA funding will work directly with FEMA. PennDOT plans to work closely with local municipalities that own Federal-aid roads and bridges to coordinate FHWA aid.

C. EXEMPTIONS MADE UNDER THE SECTION 106 PA

The Section 106 PA also provides for certain exemptions, which may be applicable. If there is an exemption in the Section 106 PA that is not in the Emergency PA, use the Section 106 PA for that exemption. Generally, the hierarchy of choice is Emergency PA first, then Section 106 PA.

D. PROJECT PATH AND PUBLIC INVOLVEMENT

PennDOT uses Project PATH to inform and involve the public on emergency actions it is undertaking. PennDOT will be completing Categorical Exclusion (CE) or state-level Environmental Document (ED) documents, mostly using the NEPA Bridge and Roadway Programmatic Agreement (BRPA) for current temporary repairs that are needed to restore connectivity of roads and bridges. In almost all instances, temporary repairs are covered under the preserve life and property exemption, or the FHWA PA exemption category or FEMA PA programmatic allowances category. In the BRPA, these are being noted as exemptions. The list of flood projects with exemptions will be being provided to Preservation PA for posting. Additionally, an Excel Spreadsheet will be prepared that will track temporary and permanent repairs. Projects that are exempted under the BRPA or other CE level documents will be marked as such and this information will also be shared with Preservation PA.

Permanent repairs to be completed at a later date will be scoped and prepared as a separate CE document. Marked Section 106 exemptions for permanent repairs will also be shared with Preservation PA both as reports and within the Excel Spreadsheet.

Non-exempt or non-programmatic allowance activities will need to be coordinated with the SHPO, FHWA and/or FEMA. The following special early notification and finding forms have been developed for both FEMA and FHWA-led projects:

- [*PennDOT Project Early Notification/Scoping Results Form for Emergency Projects Form*](#)
- *Section 106 under FEMA Field Assessment and Recommendations for Emergency Projects Form*
- *PennDOT Section 106 under FHWA Field Assessment and Finding for Emergency Projects Form*

These projects will be entered as Project PATH projects, and Section 106 steps and documentation will be posted on the Project PATH database by PennDOT's Cultural Resources Professionals (CRPs). If there is a likelihood of effects to historic resources, the CRPs will also solicit for potential consulting parties and the public, following the same protocols as for non-

emergency projects. For the FEMA and FHWA Emergency PAs, we expect that the SHPO will need to concur on most actions, unlike the current non-emergency PA. For FEMA-funded projects, it is PennDOT's expectation that project findings will ultimately be made by FEMA, based on information provided by PennDOT.

E. NON-DECLARED EMERGENCIES

At times, PennDOT has a need to act in an expedited manner, usually on a project-specific basis. These emergencies (small 'e') do not have a Federal declaration, do not involve Federal ER Funds, and therefore do not qualify as an emergency under either the Emergency Relief PA or 36 CFR 800.12. An emergency is defined as an event, disaster, occurrence (or the expectation for an occurrence, event or disaster) that produces an immediate threat to life or property and the associated response to such an event, occurrence or disaster.

If a State or Federal emergency has not been declared by the Governor or the President and funds will not be utilized from FHWA's Emergency Relief Program, follow the procedures described below, and indicate the funding source being used in any transmittals to the PHMC, consulting parties, or the public. The District Executive (DE) or Assistant District Executive (ADE) determines whether immediate action is or is not needed. For purposes of the State History Code or Section 106 "immediate" should be defined as eight (8) hours or less.

1. Decision: Immediate Action is Needed for Safety of Life or Property

- a. The Action is taken; in cases of known or suspected historic resources (e.g. covered bridges) the immediate actions should be temporary or reversible wherever possible.
- b. The DE, ADE or someone acting on his/her behalf should inform the Environmental Manager, and/or the District CRP of the actions that were taken if there is any possibility that a property 50 years old or older was affected EITHER by the incident/occurrence OR the subsequent actions unless he/she knows that the involved resource has been previously determined not eligible.
- c. The District CRP should inform PHMC of the actions taken if it affected an eligible or listed resource or a resource 50 years old or older whose eligibility is unknown.
- d. Subsequent coordination should take place, as necessary, following normal procedures unless the actions were temporary, stabilizing actions and the situation still requires a shortened consultation timeframe; in this case the DE/ADE should establish the necessary timeframe.
- e. If the District CRP determines that no consultation with PHMC is necessary (i.e. no eligible or potentially eligible resource is affected), he/she should inform the DE/ADE/person in charge of handling the emergency.

2. Decision: *Immediate Action is NOT needed*

(No immediate threats to life or property requiring immediate action but still an emergency requiring action outside the normal NEPA process)

- a. The DE, ADE, or someone acting on his/her behalf determines whether or not there is any possibility that a property 50 years old or older has been affected by an incident/occurrence, or could be affected by proposed subsequent actions; if so he/she should then notify the Environmental Unit and/or the District CRP and provide a required timeframe for response time needed from PHMC. If none is provided the default is seven (7) days.
- b. The CRP will determine whether an historic resource is being affected and whether it is necessary to consult with PHMC. If no coordination is needed, the CRP will inform the DE/ADE.
- c. If the CRP determines that it is necessary to consult with PHMC, he/she will phone the Bureau of Historic Preservation (BHP) Director (or person acting as such at the time) informing of the emergency, the proposed actions, and the response time needed; the cultural resources professional will also provide this information by memo to PHMC (by email if the necessary response time is 48 hours or less), attaching an official notice from the President/Governor/DE/ADE as applicable that this is considered an emergency.
- d. If no response is received from PHMC within the specified timeframe the cultural resource professional should provide his/her guidance to the DE/ADE/responsible person.

F. LATE DISCOVERIES

Late discoveries are almost always archaeological, and unanticipated. These late discoveries are distinguished from deferred archaeology that would occur during final design (*Chapter VII*), and are planned. Late discoveries would also be distinguished from last-minute changes in design that would affect the Area of Potential Effect (APE) or alter the anticipated impacts. The operative term for the difference in late discoveries from other activities is unanticipated.

Per 36 CFR 800.13(b), if historic properties (including archaeological sites) are discovered after the Section 106 process has been completed, or if unanticipated effects to historic properties occur during project construction, the District Archaeologist or Architectural Historian shall immediately notify FHWA, the Cultural Resources Unit, and PHMC. Federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery or the effected property will also be notified. FHWA may also notify the ACHP.

If the project has not yet been approved or if construction has not yet begun, consultation shall follow 36 CFR 800.6 to resolve any adverse effects (see *Chapter IX*). If the project is in construction and any human remains or graves, foundations or other building remnants, cultural features, or artifact scatters are uncovered, the contractor is to follow the procedures in PennDOT's *Highway Construction Specifications* (Publication 408), Section 105.15.

On rare occasions, an archaeological monitor will be used during construction. Monitoring should never take the place of archaeological testing during the environmental review process, but in certain situations where testing was not feasible or there is high probability for human remains, a monitor may be used. The decision to use an archaeological monitor will be made in consultation with PHMC, FHWA, and Tribes/Nations, if appropriate. If human remains or graves, foundations or building remnants, features or artifact scatters are uncovered during construction, the archaeological monitor shall have the authority to stop construction in the immediate area of the discovery. The monitor shall immediately notify the District Archaeologist who shall in turn notify FHWA (or the USACE), the Cultural Resources Unit, PHMC, and any Federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery. If the project is federally funded, FHWA will make the final determination as to how the discovery is treated. See *Chapter VII* for additional discussion of archaeological monitoring.

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XIV. CURATION OF ARCHAEOLOGICAL COLLECTIONS

This section provides guidance on the curation of artifacts and records recovered during Archaeological Identification (Phase I), Evaluation (Phase II) or Data Recovery (Phase III) investigations undertaken in compliance with either Section 106 of the National Historic Preservation Act (NHPA) or the Pennsylvania State History Code (37 Pa.C.S.A. Part 101-906). Federal regulations establish standards for the preparation and curation of archaeological collections. An archaeological collection is defined as all artifacts, field notes, maps, photographs and other records generated or recovered during an archaeological investigation. (This guidance supercedes Pennsylvania Historical and Museum Commission (PHMC) Curation Guidelines for Archaeological Artifacts and Records, April 9, 1991 Strike-Off Letter Clarification (SOL 430-91-74).)

A. FEDERAL AND STATE LAWS, REGULATIONS AND GUIDANCE

1. 36 CFR 79 and Section 106 of the National Historic Preservation Act

Federal regulations (36 CFR 79) establish standards for federal agencies to preserve archaeological collections recovered under the authority of Section 110 of the NHPA (16 U.S.C. 470h-2). The mandates under Section 110 are largely applicable to federally owned or controlled properties, however, 36 CFR 79.49(a)(2)(v), states that records and documents relating to Section 106 compliance are subject to the 36 CFR 79 regulation. Under the implementing regulations for Section 106 of the NHPA, 36 CFR 800, the Advisory Council on Historic Preservation (ACHP) has issued guidance (*Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites*, effective June 17, 1999) regarding the treatment of archaeological sites and artifacts. When data recovery is undertaken as a resolution of adverse effects, the 1999 ACHP guidance specifies that “appropriate arrangements for curation of archaeological materials and records should be made.” A Memorandum of Agreement (MOA), Letter of Agreement (LOA), Programmatic Agreement (PA), or Memorandum of Understanding (MOU) should include a provision for curation of archaeological artifacts and records, if archaeological investigations are undertaken. Curation must be in accordance with *The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation*.

The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation defines proper curation standards as including the following four criteria:

- Curation facilities have adequate space, facilities and professional personnel.
- Archaeological specimens are maintained so that their information values are not lost through deterioration and records are maintained to a professional archival standard.

- Curated collections are accessible to qualified researchers within a reasonable time of having been requested.
- Collections are available for interpretive purposes, subject to reasonable security precautions.

2. State History Code

For 100% state funded projects, the State History Code gives the PHMC a responsibility to preserve archaeological collections from Commonwealth property for the public benefit (36 Pa C.S.A. Parts 102 & 506).

3. Native American Graves Protection and Repatriation Act (NAGPRA)

The Native American Graves Protection and Repatriation Act (NAGPRA 1990) protects Native American graves and sacred objects on Federal and tribal lands. The Federal Highway Administration (FHWA) does not own land and there are no tribal lands in Pennsylvania, therefore NAGPRA does not specifically apply to FHWA-aid projects. However, if burials or sacred objects are found during an archaeological excavation conducted under Section 106 of the NHPA, FHWA is obliged to consult with the Tribes/Nations concerning the treatment of the remains or sacred objects. FHWA will consider the views of the Tribes/Nations, particularly regarding burials or objects considered sacred to the Tribe(s)/Nation(s).

B. DISPOSITION OF ARCHAEOLOGICAL ARTIFACTS AND RECORDS FROM COMMONWEALTH LAND, PRIVATE PROPERTY, OR FEDERAL LAND

When archaeological sites are identified during cultural resource studies for Federal-Aid or State funded projects, PennDOT is responsible for the disposition of the artifacts and records at the conclusion of the project. The status of property ownership at the time of the archaeological excavations will be a consideration in whether artifacts are curated in a repository or returned to a private property owner. The State Museum of Pennsylvania is the main repository for archaeological artifacts and records recovered under Section 106 of the NHPA and the Pennsylvania State History Code. Collections may alternatively be curated at another institution or facility through a loan agreement with the State Museum. Archaeological collections are not to be permanently stored at a consultant's office. It is the responsibility of the District Archaeologist to ensure that Archaeological collections are properly disposed of at the conclusion of the project.

1. Collections from Commonwealth Property

Under the State History Code, the State Museum of Pennsylvania has the right of first refusal for all archaeological collections from Commonwealth-owned property. When PennDOT owns fee title to a property or owns an easement for highway purposes at the time archaeological testing is conducted, or when artifacts are recovered from property owned by another state agency, the District or consultant conducting the archaeological work will make arrangements with the State Museum of Pennsylvania to curate the collections. The State Museum will not accept

archaeological collections without documentation of ownership, therefore the submission must include a letter declaring that the collection originates from Commonwealth-owned land.

2. Collections from Private Property

When artifacts are recovered from privately owned land, the District Archaeologist or consultant will request that the landowner donate the artifacts to the State Museum. If the landowner agrees to donate the artifacts, the District Archaeologist or consultant must ask the owner to sign the PHMC's gift agreement (See Forms and Guidance at <http://phmc.info/historicpreservation>). The PHMC's Accessions Form and Gift Agreement allows the State Museum to acquire legal title to the artifacts. As the agency initiating transportation projects under Section 106 or the State History Code, it is PennDOT's responsibility, not the State Museum's, to obtain a signed gift agreement from the property owner. If the property owner refuses to sign the gift agreement then the artifacts must be returned to the landowner at the conclusion of the project. It is important to note that records and documentation from the archaeological studies do not belong to the property owner and must be submitted to the State Museum of Pennsylvania.

3. Collections from Federal Land

When artifacts are recovered from federally owned land, for example, land owned by the National Park Service, the collection belongs to the federal agency. As a courtesy, PennDOT will notify the State Museum when artifacts are recovered from Federal land. PennDOT will submit the collection to the federal agency at the end of the project.

4. Tribal Requests

The requirements of the National Historic Preservation Act obligate federal agencies to consult with federally recognized Indian Tribes/Nations (see *Chapter V*). Under Pennsylvania state law, these Tribes/Nations do not have legal claim to any artifacts either from Commonwealth or from privately owned land. If a Tribe/Nation requests artifacts or other materials from an archaeological excavation, the District Archaeologist must notify FHWA (or the US Army Corps of Engineers (USACE)) and the Bureau of Project Delivery Cultural Resources Unit. FHWA (or USACE) will meet with the Tribe(s)/Nation(s), the State Museum of Pennsylvania, and the private landowner, if applicable, to consider the request. If the Tribe's/Nation's request involves artifacts from federally owned land, the appropriate federal agency must be contacted.

C. OBTAINING SIGNED GIFT AGREEMENTS FOR ARTIFACT DONATION TO THE STATE MUSEUM OF PENNSYLVANIA

Normally, PennDOT will not have purchased required ROW when Archaeological Identification (Phase I) and Evaluation (Phase II) studies are conducted for proposed projects. It is more likely that PennDOT would have purchased the required the ROW during a Data Recovery excavation (Phase III), although this is not always the case. Therefore, it is important that the consultant conducting the archaeological studies and the District Archaeologist be aware of the status of property ownership during each phase of archaeological testing. Recovered artifacts legally belong to the owner of the property at the time of excavation. A private landowner's consent will be required to curate artifacts at the State Museum or any other institution. The optimal time

for requesting a property owner to sign the PHMC's Accessions Form and Gift Agreement gift agreement is as follows.

1. Archaeological Identification Survey (Phase I) and Archaeological Evaluation Survey (Phase II)

When an archaeological site is identified during an Identification (Phase I) survey, a District representative or the consultant conducting the survey should explain to the property owner the scientific value of archaeological collections and the benefits of donating artifacts to the State Museum, and/or provide the owner with a copy of the PHMC's brochure on artifact donation.

Not all artifacts are worthy of curation and is dependent on the context in which they are recovered. For example, artifacts that represent random roadside discard should not be sent to PHMC for curation. Archaeological sites are defined using the PHMC's Site Identification Criteria (November 2008). In general, if the locus of artifact recovery has been given a PASS number or an Isolated Find number, a signed gift agreement should be obtained from the property owner. The PHMC's Curation Guidelines should be consulted for guidance on what artifacts to curate (see Forms and Guidance at <http://phmc.info/historicpreservation>).

The signed gift agreement should be obtained at the end of the identification survey, unless an archaeological evaluation (Phase II) survey will be conducted. The consultant should retain the artifacts recovered during the Identification phase until the Evaluation report is completed. If the landowner agrees to donate the artifacts to the PHMC, they may sign the gift agreement either before the Phase II fieldwork begins or after the fieldwork is completed. The Accessions Form and Gift Agreement requires that an artifact inventory be attached. This inventory is not needed to obtain the landowner's signature prior to excavation; however, a property owner is not required to sign before they see an artifact inventory.

If the landowner is unwilling to sign the gift agreement, the District Archaeologist or the consultant should make a concerted effort to explain to the landowner the importance of donating the collection to the Commonwealth, that the artifacts are valuable for their research potential. If the property owner still does not wish to sign the Accessions Form and Gift Agreement, the artifacts must be returned to the owner. The artifacts should not be returned until a report is accepted by PHMC and the requested analyses are completed per the PHMC curation guidelines (see *Section D* below for submission procedures). Please note that the archaeological records including field notes, maps, photos, and other documentary materials do not belong to the property owner and must be submitted to the State Museum whether or not they are accompanied by the artifacts.

2. Data Recovery Excavations (Phase III)

Archaeological sites determined to be eligible for the National Register are usually eligible under Criterion D for their important information. Archaeological Data Recovery excavations involve the recovery of that important information which is contained in the artifacts and associated records. The purpose of curation is to retain and preserve this information for future researchers. Archaeological Data Recovery generally involves a large expenditure of public dollars and it is important that these collections be preserved for the public benefit.

When data recovery excavations will be conducted prior to PennDOT purchasing the required ROW, the District or consultant will determine before excavations are initiated whether the property owner intends to donate the collection to the PHMC. If the property owner agrees to sign the PHMC's gift agreement, they may sign either prior to the start of excavation or at the conclusion of the data recovery field testing.

If the landowner refuses to donate the artifacts to the State Museum, or if there is uncertainty about whether the owner will donate the collection, the District Archaeologist must consult with the Project Manager or Environmental Manager, the Cultural Resources Unit and FHWA (or USACE), PHMC and any Tribes/Nations or consulting parties before proceeding with data recovery. The costs of the data recovery and views of the parties involved must be weighed against the loss of the collection. Alternative mitigation options (*Chapter IX.D*) should also be considered, if appropriate.

If there is a high probability of encountering Native American burials, or consultation with federally recognized Tribes/Nations has identified a site as sacred or of interest to them, it is strongly recommended that the required ROW be purchased before excavation begins. This will avoid potential conflicts between a private landowner and Native American Tribes/Nations regarding disposition of burials or sacred objects. Although Tribes/Nations have no legal claim to artifacts or burials, Section 106 requires consultation with Tribes/Nations. FHWA will take into account the views of the Tribe(s)/Nation(s) in making a decision on the treatment of burials or objects considered sacred to the Tribe(s)/Nation(s). Projects can potentially be delayed when consultation is protracted.

Another incentive for either obtaining a property owner's consent to sign a gift agreement or waiting until the required ROW is purchased to conduct excavations is that artifacts that must be returned to the property owner will be subject to additional analyses to offset the loss, per the PHMC curation guidelines. The ACHP also supports a higher level of analysis when artifacts will be lost to future research.

3. Changes in Property Ownership Between Phases of Archaeological Investigation

In situations where the property changes ownership between phases of an archaeological investigation, the artifacts belong to the landowner(s) that held title to the land while the particular phase of archaeological investigation was being carried out.

4. Temporary Construction Easements

Temporary easements that are needed during construction are part of the project's area of potential effect. If an archaeological site is identified within a temporary easement and a collection is generated, the property owner will need to sign the Accessions Form and Gift Agreement in order to donate the artifacts to the State Museum. Note: The use of geotextiles and fill is encouraged as a means of avoiding archaeological sites in temporary construction areas. See *Chapter X, Standard Treatments* for a discussion of geotextile and fill.

D. PROCEDURES FOR SUBMISSION OF ARTIFACTS AND RECORDS TO THE STATE MUSEUM OF PENNSYLVANIA

The consultant will submit archaeological collections to the State Museum after the appropriate analyses and reports are completed. Artifacts and records should be submitted within three months of transmittal of the final reports to the PHMC, unless another timeframe is specified in an MOA, MOU, or LOA.

1. What Should be Curated

Collections that are submitted to the State Museum should follow the standards for processing artifacts and records in the PHMC's curation guidelines. Artifacts from eligible and non-eligible archaeological sites, sites where eligibility has not been determined, and prehistoric isolated finds should be submitted to the PHMC. In other words, if there is an assigned PASS number or Isolated Find number, the artifacts should be curated. Artifacts that are not associated with a defined archaeological site or that are considered to be roadside trash should not be curated. In the case of historic artifacts, the consultant should ensure that enough background research has been completed to determine whether the artifacts represent a site, as defined in the PHMC's guidelines.

Artifacts that will not be curated should be returned to the property owner or discarded at the owners' request. The consultant should follow the PHMC curation guidelines for reporting discarded materials. When in doubt, consultants should confer with the District Archaeologist and/or the staff of the State Museum of Pennsylvania.

The PHMC's curation guidelines have been revised periodically and collections are subject to the curation standards that were in effect when the archaeological work was begun. For example, if data recovery excavations began in 2002 but the final report was submitted to the PHMC in 2005, the 2002 curation guidelines would apply. The most recent guidelines are available under Forms and Guidance at <http://phmc.info/historicpreservation>.

2. Documentation Accompanying Collection

Collections submitted to the State Museum must include the following documentation:

a. Cover Transmittal Letter

The cover transmittal letter should contain at a minimum the project location and name, the PHMC's ER number, the archaeological site name and number, the number of boxes being sent, and which curation guidelines (what year) were followed in preparing the collection for curation. The letter must state either that the Commonwealth is the owner of the artifacts, or that the collection comes from private land. In the latter case the gift agreement signed by the property owner must be attached. When artifacts are from Commonwealth property the letter must be on District letterhead and signed by the Project Manager, District Archaeologist or other District representative. Consultants may prepare letters for the District's signature. *Appendix 8* contains a sample letter.

b. The PHMC's Accessions Form and Gift Agreement Signed by the Property Owner(s)

The Accessions Form and Gift Agreement signed by the property owner(s) must be submitted with collections from non-Commonwealth owned property. It is important to note that all individuals listed as owners (e.g. wife, husband, children) on the property deed must sign the Accessions Form and Gift Agreement form in order to insure a binding, legal document which can not be challenged at a later date. The property deed should be reviewed by the District or the consultant to insure that all of the legal parties with ownership rights are identified.

c. A Copy of the Final Archaeology Report(s).

A copy of the final archaeological report(s) must accompany the artifacts and records. The report must be of archival quality although original photographs are not necessary.

3. Payment of Curation Fee

The State Museum of Pennsylvania charges a one-time fee for artifacts and records received for curation. The fee is determined by the year a project or phase of archaeological field testing was begun. For archaeological investigations that were initiated between July 1, 1991 and June 30, 2004, the curation fee is \$250 per cubic foot. Archaeological studies initiated on or after July 1, 2004 are subject to a fee of \$350 per cubic foot. There is no curation fee for collections generated before July 1, 1991.

It had long been FHWA's policy not to pay for long-term curation of archaeological collections, but FHWA has since modified this position and is willing to fund the cost of preparing collections for curation. The PHMC's curation fee essentially covers the cost of accessioning the collection and conducting an audit to ensure the collection meets the curation standards before it is put into storage. This curation fee can be interpreted as a preparation fee, therefore covered by FHWA. The PHMC does not charge a yearly maintenance fee.

The submission of archaeological collections for curation must be made a deliverable in the consultant's contract when archaeological field studies are undertaken. The curation fee may be budgeted as part of the cultural resource consultant's contract, or may be derived from other funding sources in the District. The project manager must ensure that funds are available to pay the fee. If the curation fee is a budget item in the consultant's contract, the contract may not be closed out until collections have been submitted and curation fees paid. Submission of artifacts and records is generally a mitigation commitment when archaeological sites are adversely affected.

The PHMC prefers to invoice upon receipt of a collection. They will invoice either the District or the consultant (as appropriate), who will then pay the fee. Once the Museum receives payment, they will either sign and return the transmittal form (with District as a cc if sent by a consultant) or send a separate letter acknowledging payment received.

4. Quality Control

Consultants are responsible for ensuring that collections submitted to the PHMC are prepared according to the appropriate curation guidelines. Collections that do not meet the guidelines will be returned for processing. The consultant will be accountable for any additional expense incurred.

E. PROCEDURES FOR RETURNING ARTIFACTS TO PRIVATE LANDOWNER

When artifacts are recovered from private property and the land owner does not wish to donate the artifacts to the State Museum, the consultant should follow these procedures. Artifacts should not be returned to the owner until all consultation is completed and reports are accepted by PHMC.

When a property owner expresses a desire to have artifacts returned, the consultant should determine whether the owner wishes to retain the entire artifact assemblage or is only interested in certain artifacts. If the owner is interested in keeping only particular artifacts, the consultant or District Archaeologist should ask the owner to donate the remainder to the PHMC by signing the Accessions form and Gift Agreement. For those artifacts that will be returned to the owner, the District Archaeologist must contact PHMC to discuss any additional analyses that should be completed. The PHMC curation guidelines require, at a minimum, photographs, drawings, and measurements of these artifacts. Guidance from the Advisory Council would also support additional analyses to compensate for the loss of the artifacts to future research.

Artifacts should be returned to the landowner only after all coordination with PHMC has been completed for the project. NOTE: The archaeological records including field notes, maps, photos and other documentary materials do not belong to the property owner and must be submitted to the State Museum whether or not they are accompanied by the artifacts.

F. SUBMISSION OF COLLECTIONS TO A MUSEUM OR INSTITUTION OTHER THAN THE STATE MUSEUM

Occasionally, a local museum or historical society, or a federally recognized Tribe/Nation, will request that all or portions of a collection be temporarily or permanently displayed or housed at their facility. The local institution should have some minimal security provisions in place and a proper storage area.

1. Artifacts from Private Property

If the artifacts were recovered from private property and the owner prefers to donate them to a local institution rather than the State Museum, the property owner is responsible for making the appropriate arrangements.

2. Artifacts from Commonwealth Property

If a museum or local institution, or a federally recognized Tribe/Nation, has requested artifacts and/or records from a site excavated on Commonwealth property owned in fee title or from an easement owned for highway purposes, the District Archaeologist should inform the State Museum of the request. The FHWA or USACE, as appropriate, should also be notified.

Typically, the artifacts and records will first be submitted to the State Museum for accessioning. PHMC will then negotiate a loan agreement with the appropriate parties. PennDOT is not required to participate in these negotiations.

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XV. QUALITY ASSURANCE/QUALITY CONTROL

The notion of Quality Control and Quality Assurance is anchored to the notion of Section 106 as a process, not a result. Therefore, the central goal in Section 106 is coming to a decision and providing solid documentation to support that decision. To achieve that goal, we believe the program is best built on acquiring an adequate number of the right type of professionals, ensuring that they have adequate training, monitoring and tracking important decisions, and operating in a transparent environment open to inspection. The remainder of this chapter is a discussion of how this should be achieved.

A. DISTRICT DESIGNEES AND DELEGATION

A PennDOT District Designee (DD) that has the appropriate minimum qualifications and training is delegated authority to make exemptions under Section 106 on behalf of FHWA and PennDOT. That authority is effected through the ability to sign-off on behalf of PennDOT for these exemptions in the Categorical Exclusion (CE) or relevant National Environmental Policy Act (NEPA) or Act 120 document. Delegated authority also means that with rare exception, the DD's exemption is not subject to review, except as part of a Quality Assurance program. Quality Control, as defined in a delegated signature means that the delegated DD has the knowledge and experience to make an exemption under Section 106 for a given project, by taking into account all available information to support that exemption, through field view notes, telephone, or e-mail conversations, etc.

Delegation to a DD is given by the Head of the Cultural Resources, upon completion of a training program (*Table XV-1*). Training is required from three elements – an introductory course in Section 106 policy and practice; PennDOT training on the application of the Section 106 Programmatic Agreement and associated Handbook; and, the PHMC-sponsored Cultural Resources Essentials (CRE) Basics.

The first element – an introduction to Section 106 – can be completed by taking PennDOT-sponsored course: *Section 106 Principles and Practice (Intro 106)*, which is offered through PennDOT's ECMS Training Calendar. If this course is not available in a timely manner, the element can also be met by taking the introductory course offered by the National Highway Institute (NHI): *Beyond Compliance. Historic Preservation in Transportation Project Development* (FHWA-NHI 142049); or by the National Preservation Institute (NPI): *Section 106. An Introduction*.

The second element – the application of the Section 106 Programmatic Agreement and associated Handbook – can be completed by taking the PennDOT-sponsored course: *Cultural Resources Handbook Basics*, which is offered through PennDOT's ECMS Training Calendar. This course is offered by appointment and is scheduled by one of the Cultural Resources Professionals (CRPs) in the District or Central Office.

The third element – *PHMC’s Cultural Resources Essentials (CRE) Basics* – is a scheduled course offered by the PHMC generally every other year.

Existing District Designees who had been delegated under the previous Section 106 Minor Projects Programmatic Agreement as of May 2010 were grandfathered into the new Agreement for delegation provided they had had the second element, i.e., training under the new Agreement. For a new District Designee to obtain delegation, the first two elements must be completed. Within two years of delegation, the new District Designee must complete the third element – CRE Basics to retain that delegation.

Table XV-1 - District Designee Training Requirements – New Certification		
Element 1	Element 2	Element 3
Intro to Section 106	Application of the PA and Handbook	PHMC CRE Basics
One of the following: <ul style="list-style-type: none"> • NHI 142049: Beyond Compliance: Historic Preservation is Transportation Project Development • NPI: Section 106: An Introduction • Section 106 Principles and Practice (Intro 106) 	Cultural Resources Handbook Basics	Taken within 2 years of delegation

In order for a DD to retain delegation, each of the three elements must be fulfilled every several years (**Table XV-2**). Element 1 – Section 106 – must be completed every 5 years and can be met by either retaking one of the Section 106 courses specified to meet initial certification. In addition, a DD can substitute the PennDOT-sponsored course – *Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106)*, which is offered through PennDOT’s ECMS Training Calendar. In addition, attendance at the annual Statewide Preservation Conference for a total of 7 hours in specified workshops and sessions can also meet this element.

Element 2 – Application of the PA and Handbook – must be completed every 2 years. Group Refresher training will be offered through the PennDOT training calendar, under the course name *Cultural Resources Handbook Basics*, and is generally offered in a webinar format.

Element 3 – PHMC Cultural Resources Essentials – must be completed every five years and can be met by taking one of the two PHMC CRE courses – Forum or Best Practices.

Table XV-2 - District Designee Training Requirements – Renewal of Certification		
Element 1	Element 2	Element 3
Intro to Section 106	Application of the PA and Handbook	PHMC CRE Basics
One of the following every 5 years: <ul style="list-style-type: none"> • NHI 142049: Beyond Compliance: Historic Preservation is Transportation Project Development • NPI: Section 106: An Introduction • Section 106 Principles and Practice (Intro 106) • Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106) • Equivalent Byways workshop on 106 	Cultural Resources Handbook Basics (webinar)	1 Essentials course (Forum or Best Practices) every 5 years

B. STAFFING – MINIMUM QUALIFICATIONS

There is really only one nationally recognized standard for professional qualifications for archaeologists and Architectural Historians – the *Secretary of Interior Standards*. The premise of the *Secretary of Interior Standards* is that someone meeting these standards can make a professional decision without review by another professional. *Secretary of Interior Standards* (36 CFR 61) define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved.

1. Archaeology

The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

- At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management;
- At least four months of supervised field and analytic experience in general North American archaeology; and,
- Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the historic period.

2. Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or, a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following

- At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
- Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

NOTE: In the previous definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

Staffing at PennDOT is tied to these Standards. Each Cultural Resources (CR) team consists of an archaeologist meeting this Standard for archaeology and an Architectural Historian also meeting this standard for architectural history. The only positions not formally determined to require these standards are the public information specialist and the tribal coordinator. In order to maintain flexibility in the program, it is recommended that the public information specialist be qualified in either archaeology or architectural history. The tribal coordinator should be qualified as a historic preservationist or as an anthropologist.

Note that the minimum standards from the Secretary of the Interior are more restrictive than those identified in the available job classifications: historic preservation specialist or museum curator, archaeology 2. Under non-Civil Service hiring procedures, the test is specified for historic preservation specialist; however, in the interview, PennDOT will not hire an individual that does not meet the higher *Secretary of Interior Standards*.

Any consultant that might be delegated signatory authority to act as a CRP within PennDOT also must meet these *Secretary of Interior Standards*.

A PennDOT CRP who has the appropriate minimum qualifications and training is delegated authority to make Section 106 decisions on behalf of FHWA and PennDOT (**Table XV-3**).

Table XV-3 - Cultural Resource Professional Section 106 PA Training Requirements			
Element 1 Intro to Section 106	Element 2 Application of the PA and Handbook	Element 3 PHMC CRE Basics	Section 106 topics
New Delegation			
One of the following: <ul style="list-style-type: none"> • NHI 142049: Beyond Compliance: Historic Preservation is Transportation Project Development 	Cultural Resources Handbook Basics	Taken within 2 years of delegation	

Table XV-3 - Cultural Resource Professional Section 106 PA Training Requirements			
<ul style="list-style-type: none"> • NPI: Section 106: An Introduction • Section 106 Principles and Practice (Intro 106) • Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106) 			
Re-Delegation			
One of the following every 5 years: <ul style="list-style-type: none"> • NHI 142049: Beyond Compliance: Historic Preservation is Transportation Project Development • NPI: Section 106: An Introduction • Section 106 Principles and Practice (Intro 106) • Completing Section 106: Resolving Adverse Effects and Writing Agreement Documents (Advanced 106) • Equivalent Byways workshop on 106 advanced topics 	Refresher training on application of PA every year	Attendance at all 4 PHMC CR Essentials every 5 years	Recommended: Participation in regional/national conferences

That authority is effected through the ability to sign-off on behalf of the Director of the Bureau of Project Delivery, for findings of eligibility and effect, as well as other actions identified under 36 CFR 800. Delegated authority also means that with rare exception, the CRPs finding is not subject to review, except as part of a Quality Assurance program. Quality Control, as defined in a delegated signature means that the delegated CRP has the knowledge and experience to make a finding of eligibility or effect for a given project, by taking into account all available information to support that finding, through technical basis reports, field view notes, telephone, or e-mail conversations, etc.

Delegation to a CRP is given by the Cultural Resources Unit Head, upon consultation with the CRPs mentors and other staff familiar with that individual’s work. Upon delegation, FHWA is notified by Central Office. Delegation is generally not given fully to a CRP, but in stages upon completion of training. The types of delegation that can be given are: delegation to scope a project for historic resources, delegation to make a finding under the Section 106 PA as a “qualified professional”, delegation to review a cultural resources technical basis report and make a finding of eligibility or effect based on the report’s finding, and delegation to consult and coordinate with Federally recognized Tribes/Nations. A fifth type of delegation would be for resolving adverse effects leading to a Memorandum of Agreement (MOA) or PA. Currently, the

responsibility for consultation leading to resolution lies with the CRPs in the District; however, the review and execution of a MOA, Letter of Agreement (LOA), Memorandum of Understanding (MOU), or PA lies with Central Office CRPs. It is anticipated that in the future, District CRPs will also become responsible for writing and executing agreement documents, based on training.

Table XV-4 identifies where CRPs have delegated signatory authority. In cases where projects are highly controversial, have the potential to set PennDOT policy, or where a CRP may feel uncomfortable with the decision, the table identifies an elevation process.

Table XV-4 - Signatory Path for Cultural Resource Information/Documents (unless otherwise noted, all transmittals are to PHMC, FHWA, or Preservation PA)				
Document Type	DD	CRP	Unit Head	Division Chief
Exemption under Section 106, made on CE or related document	S	S		
Documents transmitting information only	S	S		
Findings made under the Section 106 PA		S	S	
Documents containing recommendations on identification, eligibility, and effect where PennDOT agrees and there is no controversy on the project		S	S	
Documents returned to the Consultant for revisions		S	S	
Documents containing recommendations on identification, eligibility, and effect where PennDOT disagrees with either the District, PHMC, or consultant, when there is no controversy on the project		S	S	
Documents containing recommendations on identification, eligibility, and effect, when there is controversy on the project		S	S	
Transmittals of MOAs, LOAs, MOUs, PAs to Division Chief for signature		S*	S	S
Correspondence to FHWA only involving Section 106 coordination		S	S	
S= signature Cc:= copy to S* = transmittal by Central Office Staff				

C. TRAINING TOWARD DELEGATION

The training program for CRPs consists of four levels (**Table XV-5**). Each level is met by a combination of education acquired through formal courses, self-taught instruction, one-on-one tutoring, and/or experience. Separate tracks are constructed for Archaeologist and Architectural Historian.

Table XV-5 -Training Levels		
Level	Description	Time Frame
I	Requirements for Hire	N/A
II	Basic Competency	6-9 months
III	Advanced Competency	12-18 months
IV	Retention of Skills	Annual/Biennial

1. Level I. Requirements for Hire

Each CRP hired within PennDOT must meet the minimum qualifications as specified under 36 CFR 61 and *Secretary of Interior Standards* (discussed earlier in the chapter).

2. Level II. Basic Competency

Basic competency is defined as the skills, beyond the minimum professional requirements, needed to move normal PennDOT projects through the most common Section 106 steps, including scoping, application of the Section 106 PA, guidance of eligibility studies, and guidance of effects studies. Basic competency also implies an understanding of: regional history and prehistory; the Section 106 process; and the NEPA process, so that Section 106 decisions can be effectively integrated into NEPA. It is anticipated that basic competency can be achieved within six to nine months of hiring.

Basic competency also allows the CRP to make findings under the Section 106 Delegation PA. In order to meet the terms of training for the Section 106 Delegation PA, must have a basic Section 106 course and an overview of the PA and its application. Within 2 years of delegation, the CRP must take the PHMC Cultural Resources Essentials: Basics course.

In order to retain delegation, the CRP must attend a Section 106 course or equivalent Byways workshop every 5 years, and at least all four Cultural Resources Essential Courses (Basics, Applications, Forum, and Best Practices). Every year, the CRP will need to take a refresher course on the application of the PA.

a. Archaeologists

Education

A series of PennDOT-sponsored courses should be completed in the first six to nine months (*Table XV-6*). Some of the courses are mandatory for PennDOT hires, and would not be required for consultant-hired positions. The educational package will be supplemented by attendance at one or more regional archaeological conference(s).

TABLE XV-6 - Educational Courses	
Level	Archaeology
II	Section 106 PA - Basic Course Training 4(f) Handbook training Project Development and Environmental Orientation (NHI 14205) ENVDO Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049, or equivalent NEPA online training, or equivalent CE Handbook Training OSHA basic Course

Experience

The initial period of employment at PennDOT will be spent in Central Office with the Cultural Resources Unit, prior to assignment out to the District Office. Of this time (estimated at 5-8 weeks) up to 5 will be spent working closely with the PHMC's Bureau for Historic Preservation (BHP) staff.

Within the Cultural Resources Unit, the skills to be emphasized are:

- Reviewing technical basis reports, including Phase I and II archaeological reports, management summaries, and work plans;
- Using the Section 106 PA , including background information research, field determinations, documentation, and coordination with the PHMC;
- Scoping PennDOT projects , and identifying what additional information or studies are needed to make findings of eligibility and/or effect;
- Working with the NEPA process, including CEs, Environmental Assessments (EAs), and Environmental Impact Statements (EISs);
- Applying National Register Criteria for Eligibility to archaeological resources;
- Apply the Criteria of Effect and Adverse Effect to archaeological resources;
- Using the Section 106 process to move PennDOT projects through the NEPA process;
- Tracking projects, using the Cultural Resource Tracking System and other PennDOT databases; and,
- Coordination and consultation with Federally Recognized Tribes/Nations interested in the projects.

At the PHMC, BHP staff will emphasize the following skills:

- Familiarity with the Pennsylvania Archaeological Site Survey (PASS) files;
- Familiarity with Archaeological Survey and Report Standards;
- Familiarity with the Cultural Resources GIS (CRGIS);
- Familiarity with previous research in the assigned Region;
- Reading and interpreting landforms;
- Applying settlement pattern models to site predictability;
- Understanding PHMC perspective of National Register Criteria for Eligibility as applied to archaeological resources.

Training in Central Office will be an apprentice format, with each new archaeologist working with an already established project team. Review of technical basis reports will be concurrent, with the new archaeologist working with their established team counterpart comparing review notes. Emphasis will be on substantive comments for the report and summarizing those comments into an appropriate memo format. On average, a trainee will achieve competence in report review after 10 documents and draft comment memos.

The new archaeologist will also attend as many field views as possible during the initial stay and beyond, in order to learn how the Section 106 PA is applied in real-world situations. He/she will assist the established team archaeologist in preparing the background research and the finding documentation. Emphasis will be on determining how the Section 106 PA should be applied, and what level of documentation is necessary to support the finding, both in the field assessment form and in any supporting technical basis reports. On average, a trainee will achieve competence in the Section 106 PA after 10 applications.

The field views that are scoping field views will be important to show the interplay of the different environmental issues in real-world situations, and the interplay between design and environmental considerations. Where possible, the new archaeologist will work closely with their above ground historic properties regional team partner, but will participate in scoping field views in other Districts as opportunities arise. Emphasis will be on determining how the Section 106 PA should be applied, whether any other applicable PAs should be applied, and what studies are necessary to substantiate a finding of eligibility and/or effect. In addition, trainees should work toward providing input to the design team in opportunities to avoid unnecessary impacts to archaeological resources. On average, a trainee will achieve competence in scoping field views after attending 40 projects. The number of projects attended, reports reviewed, and applications of the Section 106 PA are estimates. Delegation will be given when the trainee can demonstrate the necessary skill sets.

At the PHMC, it is anticipated that each new Archaeologist will assist PHMC staff in reviewing technical basis reports from a PHMC perspective. Other anticipated duties will include completion of PASS forms, entry of PASS data into a database, research on regional prehistory, using contract reports and other references, and attendance at BHP archaeological eligibility meetings. At the end of the initial period, it is expected that the new Archaeologist will have an understanding of major trends in prehistory and history and the significance of archaeological sites.

At approximately 5-8 weeks, the new Archaeologist will be relocated to their assigned region and host District. At that time, the trainee should have completed the core training within the Cultural Resources Unit. The trainee may or may not have reached the target number of report reviews, scoping field views, or applications of the Section 106 PA. Participation in report review, scoping field views, or applications of the Section 106 PA will continue from the host District.

When the trainee has reached each of these goals, the trainee should contact the Head of the Cultural Resources Unit and request a delegation review for possible delegation. Until the trainee is delegated for scoping, report review, and/or application of the Section 106 PA, the District should continue to use temporary staffing arrangements made to gap the vacancy, being either delegated consultants, CRPs in other Districts, or CRPs in Central Office.

Training after the initial period in the Cultural Resources Unit will focus heavily on experience; however, courses projected for Level II will need to be worked into the schedule. At the host District, the Environmental Manager will be responsible for providing training on preparation of scopes of work and review of technical and price proposals. Central Office will provide auxiliary assistance on content issues. During the second three month handoff period, the new Archaeologist will continue to include the previously established regional team archaeologist in field views, with the goal of phasing in the new professional's participation and phasing out the old.

Communication with other Archaeologists and CRPs within PennDOT will be crucial in acquainting the new Archaeologist with PennDOT policy and critical issues. The establishment of a PennDOT Roundtable will serve as a forum for open communication. The Roundtable would also hold quarterly or semi-annual workshops, which would focus on a few key issues.

To provide insight into practical application of historic preservation theory and knowledge to specific PennDOT projects, training may be hosted by established PennDOT professionals in other Districts. Focus of this training will be on field coordination, coordination of Section 106 issues with design engineers, and scheduling. Other selected topics may be proposed.

At the end of the first year, the new Archaeologist should be able to use the Section 106 PA efficiently, review technical basis reports, prepare scopes of work and review tech and price proposals, and communicate with other environmental professionals and project engineers on ways to integrate Section 106 into the design process.

b. Architectural Historian

Education

A series of PennDOT-sponsored courses should be completed in the first six to nine months (*Table XV-7*). Some of the courses are mandatory for PennDOT hires, and would not be required for consultant-hired positions. The educational package will be supplemented by attendance at one or more regional historic preservation conference(s).

TABLE XV-7 - Educational Courses	
Level	Architectural History
II	Section 106 PA - Basic Course Training 4(f) Handbook training Project Development and Environmental Orientation (NHI 14205) ENVDO Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049, or equivalent NEPA online training, or equivalent CE Handbook Training OSHA basic Course

Experience

The first 5-8 weeks at PennDOT will be spent in Central Office with the Cultural Resources Unit prior to assignment out to the District Office. Of this time, approximately 5 days will be spent working closely with the PHMC's BHP staff.

Within the Cultural Resources Unit, the skills to be emphasized are:

- Reviewing technical basis reports, including Historic Resource Eligibility Reports, Criteria of Effects Reports and work plans;
- Using the Section 106 PA, including background information research, field determinations, documentation, and coordination with the PHMC;
- Scoping PennDOT projects and identifying what additional information or studies are needed to make findings of eligibility and/or effect;
- Working with the NEPA process, including CEs, EAs, and EISs;
- Applying National Register Criteria for Eligibility to historic sites and districts;
- Apply the Criteria of Effect and Adverse Effect to historic sites and districts;
- Using the Section 106 process to move PennDOT projects through the NEPA process;
- Tracking projects, using the Cultural Resource Tracking system and other PennDOT databases; and,
- Coordination and consultation with other consulting parties and local historical groups interested in the projects.

At the PHMC, BHP staff will emphasize the following skills:

- Familiarity with the PHRS files;
- National Register Files;
- Familiarity with the *Secretary of Interior's Standards* for identification and documentation of above ground historic properties;
- Familiarity with previous research in the assigned Region, including context studies;
- Understanding PHMC perspective of National Register Criteria for Eligibility as applied to above ground historic properties and Districts.

Training in Central Office will be an apprentice format, with each new archaeologist working with an already established project team. Review of technical basis reports will be concurrent, with the new Architectural Historian working with their established team counterpart comparing review notes. Emphasis will be on substantive comments for the report and summarizing those comments into an appropriate memo format. On average, a trainee will achieve competence in report review after 10 documents and draft comment memos.

The new Architectural Historian will also attend as many field views as possible during the initial stay and beyond, in order to learn how the Section 106 PA is applied in real-world situations, and will assist the established team Architectural Historian in preparing the background research and the finding documentation. Emphasis will be on determining how the

Section 106 PA should be applied, and what level of documentation is necessary to support the finding, both in the field assessment form and in any supporting technical basis reports. On average, a trainee will achieve competence after 10 applications.

The field views that are scoping field views will be important to show the interplay of the different environmental issues in real-world situations, and the interplay between design and environmental considerations. Where possible, the new Architectural Historian will work closely with their archaeologist regional team partner, but will participate in scoping field views in other Districts as opportunities arise. Emphasis will be on determining how the Section 106 PA should be applied, whether any other applicable PAs should be applied, and what studies are necessary to substantiate a finding of eligibility and/or effect. In addition, trainees should work toward providing input to the design team in opportunities to avoid unnecessary impacts to archaeological resources. On average, a trainee will achieve competence in scoping field views after attending 40-50 projects. The number of projects attended, reports reviewed, and applications of the Section 106 PA are estimates. Delegation will be given when the trainee can demonstrate the necessary skill sets.

At the PHMC, it is anticipated that each new Architectural Historian will assist PHMC staff in reviewing technical basis reports from a PHMC perspective. Other anticipated duties will include completion of PHRS forms, entry of PHRS data into a database, research on regional history, using contract reports and other references, and attendance at BHP architectural history eligibility meetings. At the end of the initial period, it is expected that the new Architectural Historian will have an understanding of major trends in history and the significance of above-ground resources.

At 5-8 weeks, the new Architectural Historian will be relocated to their assigned region and host District. At that time, the trainee should have completed the core training within the Cultural Resources Unit (see table). The trainee may or may not have reached the target number of report reviews, scoping field views, or applications of the Section 106 PA. Participation in report review, scoping field views, or applications of the Section 106 PA will continue from the host District.

When the trainee has reached each of these goals, the trainee should contact the Head of the Cultural Resources Unit and request a delegation review for possible delegation. Until the trainee is delegated for scoping, report review, and/or application of the Section 106 PA, the District should continue to use temporary staffing arrangements made to gap the vacancy, being either delegated consultants, CRPs in other Districts, or CRPs in Central Office.

Training after the initial period in the Cultural Resources Unit will focus heavily on experience; however, courses projected for Level II will need to be worked into the schedule. At the host District, the Environmental Manager will be responsible for providing training on preparation of scopes of work and review of tech and price proposals. Central Office will provide auxiliary assistance on content issues. During the second three month handoff period, the new Architectural Historian will continue to include the previously established regional team Architectural Historian in field views, with the goal of phasing in the new professional's participation and phasing out the old.

Communication with other Architectural Historians and CRPs within PennDOT will be crucial in acquainting the new Architectural Historian with PennDOT policy and critical issues. The establishment of a PennDOT Roundtable will serve as a forum for open communication. The Roundtable would also hold quarterly or semi-annual workshops, which would focus on a few key issues.

To provide insight into practical application of historic preservation theory and knowledge to specific PennDOT projects, training may be hosted by established PennDOT professionals in other Districts. Focus of this training will be on field coordination, coordination of Section 106 issues with design engineers, and scheduling. Other selected topics may be proposed.

At the end of the first year, the new Architectural Historian should be able to use the Section 106 PA efficiently, review technical basis reports, prepare scopes of work and review tech and price proposals, and communicate with other environmental professionals and project engineers on ways to integrate Section 106 into the design process.

3. Level III. Advanced Competency

Advanced competency is defined as the skills, beyond basic competency, needed to operate independently as a District Preservation Officer, moving the full range of PennDOT projects through all of the Section 106 steps, including negotiating mitigation commitments, initiating MOAs and Project-specific PAs, and tracking and evaluating mitigation commitments.

Advanced competency also implies an ability to make all necessary Section 106 decisions as a FHWA-delegated qualified professional, without requiring close coordination from Central Office. It is anticipated that advanced competency can be achieved within 12-18 months of hiring.

Education

A series of PennDOT-sponsored courses should be completed following the basic courses, in the next six to nine months (*Table XV-8*). In addition, within five years, the CRP will need to complete the PHMC’s four-part Cultural Resources Essentials Program: The Basics, Applications, Best Practices, and Forum. Both archaeologists and Architectural Historians are required to complete all four parts.

Table XV-8 - Educational Courses		
Level	Archaeology	Architectural History
III	PHMC Cultural Resources Essentials: The Basics PHMC Cultural Resources Essentials: Applications PHMC Cultural Resources Essentials: Best Practices PHMC Cultural Resources Essentials: Forum Environmental Assessment Handbook Training ENASS Design Manual 1 ACM Attendance Programmatic Agreement - Refresher Training Preparing Agreement Documents (ACHP Course)	
	Native Peoples of Pennsylvania	Bridges: The Foundation of our Infrastructure DESBRIDG Safely Managing Bridge Resources DESSAFE Preservation of Historic Bridges

Experience

The goal of the Level III training is to establish an independent District cultural resource team, capable of making informed decisions without close guidance from Central Office. Training from Central Office will still be in an apprentice format, but focused on mitigation and cost containment. Review of data recovery work plans or other mitigation work plans will be concurrent with the new archaeologist working with their Central Office or established District counterparts comparing review notes. While it can be expected that Central Office will continue to review mitigation commitments or data recovery work plans, it is expected that the new CRP will reach the point of being able to negotiate appropriate work plans with the consultants without direct Central Office involvement. The new CRP will also work with their Central Office or established District counterparts to monitor the execution of the mitigation commitment or data recovery fieldwork and review the results, in the form of reports and public information.

A second goal during the second year will be cost containment. The new CRP will work closely with their Central Office or established District counterparts and the District Environmental Manager, using concurrent reviews, to learn how to closely review technical and price proposals to ensure the level of effort is appropriate and that the charges are in line with the level of effort.

Additionally, the new CRP should become acquainted with PennDOT's 'best practices' in mitigation, in order to maximize flexibility when considering mitigation options.

D. CONTINUED TRAINING – STAFFING

The cultural resources field is rapidly evolving. In order for professionals to continue to operate at an advanced competency level, continual training will be necessary. This training should be focused on acquiring working knowledge of changes in theory, method, and practice in the field of historic preservation, and may include attendance at workshops, conferences, participation in American Association of State Highway and Transportation Officials (AASHTO) committees, regular review of current literature, and active presentation of PennDOT activities at conferences. Minimally, attendance at the PHMC Cultural Resources Essentials program and the Section 106 PA refresher training is required to retain delegation under the Section 106 PA.

1. Archaeologist

Education requirements include the following:

- Attendance at all four parts of the PHMC Cultural Resources Essentials program: The Basics, Applications, Best Practices, and Forum every five years;
- Attendance at workshops considering changes in Federal or State Laws and regulations;
- Participation at one or more regional or national archaeological conference(s).

Experience includes:

- Ongoing participation in PennDOT's Cultural Resource Roundtable; and,
- Participation in PennDOT's quarterly or semi-annual workshops.

2. Architectural Historian

Education requirements include the following:

- Attendance at all four parts of the PHMC Cultural Resources Essentials program: The Basics, Applications, Best Practices, and Forum every five years;
- Attendance at workshops considering changes in Federal or State Laws and regulations;
- Participation at one or more regional or national historic preservation or historic architectural conference(s).

Experience includes:

- Ongoing participation in PennDOT's Cultural Resource Roundtable; and,
- Participation in PennDOT's quarterly or semi-annual workshops.

E. PROJECT MANAGER TRAINING

Project managers are held responsible for the successful delivery of projects, which includes the successful completion of Section 106. In order to ensure good coordination with DDs or CRPs, the project managers need enough basic information about the Section 106 process to be conversant. Project managers are encouraged to take the Cultural Resources Handbook Basics course, which can be scheduled on demand in the Training Calendar from the individual CRPs. This course will introduce attendees to the basic principles, regulations, and procedures for the management of historic and archaeological resources on Pennsylvania transportation projects. Applicable laws and regulations, internal PennDOT procedures, and important contact information and guidance documents will be covered. All project managers are encouraged to take this course. As a District metric, at least 80% of all active project managers should have taken the training at least once, with a refresher at least once every 5 years.

F. MONITORING

The quality assurance process for monitoring the performance of the CRPs is largely review by exception. Problems with specific cultural resources findings are either raised by the District Environmental Manager or Project Manager, FHWA, or PHMC staff. As problems are raised, it is the responsibility of the Head of the Cultural Resources Unit in Central Office to investigate the problem, identify the cause, and take any necessary corrective action. Repeated problems that are the cause of an individual's action may be addressed through additional training, closer coordination, or ultimately revocation of delegation authority and/or disciplinary action. Repeated problems that cut across PennDOT may be due to lack of guidance or inadequate existing policy. It is the responsibility of the Head of the Cultural Resources Unit to seek resolution in providing better guidance, in consultation with FHWA and PHMC.

There are currently two monitoring programs in place to address quality assurance of CRP decisions:

- Annual review monitoring of the Section 106 PA. It is the responsibility of the Cultural Resources Unit to produce an annual report of the use of the Section 106 PA to be reviewed by FHWA, PHMC, the Advisory Council on Historic Preservation (ACHP), and the consulting parties. A copy of the report is also to be made public on the Cultural Resource Unit's web page.
- Annually, the Cultural Resources Unit participates in FHWA's Independent Oversight Program (IOP) developed for the delegation agreement that authorizes PennDOT to sign certain levels of CEs. Part of that IOP is examination of the performance of cultural resource decisions and documentation for CE Level 1a and 1b projects. Each year, 3-4 Districts are reviewed.

G. TRANSPARENCY AND TRACKING

Transparency and tracking go hand-in-hand for the Section 106 PA. Transparency in quality control and quality assurance means that decisions that are made by the CRPs as well as their justifications are visible to the design community and external partners. Tracking in this context is the record of these decisions.

Decision-making leads the process. Documentation supports the decision, but it is the decision that counts. Furthermore it is the decision that needs to be shared, with whatever documentation is necessary to support it. In the current model, progress in the Section 106 process is measured through successive decisions- APE, eligibility, effect, etc. - until the process is concluded.

1. Internal Decision-making

Although much responsibility is placed upon the CRP, as well as the DD, these individuals seek and process information and input prior to coming to decisions. Information can take the form of a conversation with another CRP, an email, comments on a draft report, etc. Until the decision and supporting documentation is set by the CRP, the CRP needs "room" to work through his/her decision. For that reason, there is a need for unofficial internal discussion that is confidential, in order to foster a free and frank discussion. Once a decision is made and documented, it can and should be shared with the larger consulting group.

2. External Transparency

The following decision points should be shared with the consulting parties and the public in as expeditious manner as possible: project scoping information where the project is not exempted from Section 106; findings of effect, and proposals to resolve adverse effect. In addition, PHMC and FHWA should also be informed of: additional studies needed to determine eligibility and/or effect on the basis of a scoping field view; determining the area of potential effect; and findings of eligibility. Within PennDOT, these decision points should be copied to the project manager and environmental manager, as well as associated documentation.

NOTE: The current method of providing external transparency is the use of Project PATH, through a partnership with Preservation Pennsylvania. Project PATH is a searchable database of project decisions and supporting documentation that is open to the public. The current web address for Project PATH is: <http://search.paprojectpath.org/>.

Each CRP is responsible for posting decisions and keeping submittals current. Archaeological decisions and supporting documentation are the responsibility of the Region's archaeologist; above-ground decisions are the responsibility of the Region's Architectural Historian.

The following quality control measures are utilized to ensure that mitigation commitments are met:

- Mitigation commitments are put into contract provisions.
- Cultural Resources Mitigation commitments are logged and tracked through Project PATH. The status of each commitment is publicly available. This will help to ensure that mitigation commitments are publicly noted and that their completion will also be a matter of public record.
- Specifically for archaeological collections, the transmittal of an archaeological collection to the State Museum and the submittal of final reports to the PHMC will be entered as separate mitigation commitments to be noted and tracked. Receipts from the State Museum for submitted collections will be considered documentation that a collection was submitted. An acknowledgment from the PHMC for the receipt of a final report will also be considered documentation.

H. ELEVATION

Although the CRPs are the professionals making determinations of eligibility and effect, as well as other decisions under 36 CFR 800, it is unrealistic to presume that their determinations are always final and not subject to review. For that reason, an elevation procedure is needed. Any technical decision regarding 36 CFR 800 made by a CRP can be questioned by the project manager, the Environmental Manager, or the Cultural Resources Unit. In addition, since decisions are made on behalf of FHWA, CRP decisions can also be questioned by FHWA. When there is a question over a decision made by a CRP, the following elevation process should be used.

When a Project Manager or Environmental Manager questions a CRP decision, that individual should meet with the CRP to first try to informally resolve the issue. If the decision by the CRP cannot be resolved informally and is based on incorrect information or based on an incorrect application of applicable laws and regulations, and where the disagreement cannot be resolved informally, the Environmental Manager or Project Manager may appeal the decision in writing to the Cultural Resources Unit Head, providing the justification for the appeal and the basis for an alternate decision. Project schedule concerns are not sufficient justification for an appeal.

The Cultural Resources Unit shall meet with the Project Manager and Environmental Manager, and the CRP who issued the decision in order to resolve the disagreement. Should the Cultural Resources Unit be unable to resolve the disagreement to the satisfaction of all parties, the Cultural Resources Unit shall issue an opinion and provide a written justification within 30 days of the meeting. Within 30 days of that decision, the Project Manager, or Environmental Manager (where applicable) or the CRP may appeal the decision to FHWA through the Cultural Resources Unit. FHWA shall consult with PennDOT, and if necessary, PHMC and/or other consulting parties to try to resolve the issue. If the issue cannot be amicably resolved among the agencies,

then FHWA shall issue an agency finding within 30 days of meeting. That finding shall be communicated to PennDOT, PHMC, and any other consulting parties involved with that particular project.

I. CONSULTANTS

Because the vast majority of the studies are completed by consultants outside PennDOT, bringing consultants into the QC/QA fold is essential. There are a number of tools that are currently being used to ensure good work:

1. Work Breakdown Structure (WBS) Standardized Scopes of Work

Standardizing scopes of work in ECMS are affected through a system of Work Breakdown Structure (WBS) codes. These codes provide a minimum level of guidance on consultant work, which is tied to desired outcomes from the Handbook. The current WBS codes relevant to cultural resources are listed in *Appendix 11*.

2. WBS Standards – Minimum Qualifications

Current Work Breakdown Structures (WBS) require consultants to meet the *Secretary of Interior Standards* to complete field studies. The *Secretary of Interior Standards* are considered the minimum education and experience necessary to make an independent decision regarding historic resources.

3. CRP In-Field Mentoring

CRPs routinely visit projects in the field, coordinating work with the consultant on site. This close coordination benefits the project by ensuring the results are predictable and expected.

4. Hold Invoices Until Work Completed

The Districts that contract with consultants should routinely withhold final payment to consultants until all deliverables specified in the contract have been submitted and accepted. One area that is often overlooked is the submission of archaeological collections to the PHMC for curation (*Chapter XIV*).

5. Consultant Ratings

PennDOT-employed CRPs are to establish ECMS rating criteria (see below) for all new contracts and work orders executed after January 1, 2009 that have identified cultural resources consultants or sub-consultants. For new contracts and work orders that have significant cultural resources work proposed, but are subsumed under one Prime consultant, the CRPs are to create a proposed rating criteria for the cultural resources component, using the [*Consultant Evaluation for ECMS Input Form*](#). The proposed rating criteria should be shared with the Project Manager. Significant cultural resources work is defined as cultural resources work in excess of \$10,000 (Including direct costs) or 100 hours.

CRPs will be responsible for completing the rating forms for consultants or sub-consultants that have had established ECMS criteria. Ratings should be completed within 60 days of the completion of all Section 106 activities, or, at the close-out of the contract or work order if that is sooner. Copies of completed ratings are to be provided to the Head, Cultural Resources Unit, Bureau of Project Delivery. In lieu of a paper or electronic capture of an ECMS rating, the CRP can send an email identifying the contract and work order, and name of the consultant rated to the Cultural Resources Unit Head. Paper or electronic copies of the consultant rating for cultural resources where the cultural resources work is not separated will still need to be provided. Rating of consultants is considered part of CRP job duties and is subject to evaluation in the Employee Performance Review.

The following steps should be taken to create an ECMS rating form and conduct a consultant rating:

- a) Create a new evaluation in ECMS for the contract/work order. Ratings must include the following categories as a minimum. Other categories may be added as warranted:

Management Information

Milestones: [Go](#)

Scope of Work: [Published](#)

Department Estimate: [Request Consultant Services](#)

Legal Work Order: [Signatory Review](#)

Final Prime Invoice: No

Final Prime Evaluation: No

Technical Proposal: [Submitted](#)

Price Proposal: [Submitted](#)

Certificate of Completion:

Project Characteristics: [Create](#)

Evaluations: [Go](#) [New](#)

Due Date: 09/22/2008

Due Date: 09/25/2008

Evaluations can be created for sub-consultants as well as prime consultants.

COMMON SELECTION - CONSULTANT EVALUATION

Available Records

Filter Name [Go](#)

Records 1 to 4 of 4 Page 1 of 1 Records Per Page: 500

Add	BP Id	Name	Role
<input type="checkbox"/>	000101	ASC Group, Inc.	Sub
<input type="checkbox"/>	000147	CHRS, Inc.	Sub
<input type="checkbox"/>	000174	EnviroScience, Inc.	Sub
<input type="checkbox"/>	000092	SKELLY and LOY, Inc.	Prime

Records 1 to 4 of 4 Page 1 of 1 Records Per Page: 500

Below is a subset of the available criteria that should be used (quoted from ECMS):

No.	Task	Weight
1.	Project Management	
1.3	Project Manager demonstrates knowledge of Federal and State requirements/regulations.	2
1.5	Project Manager and necessary Team members communicate project issues on a regular basis with PennDOT	5
1.7	Project Manager discusses any work efforts out of scope with PennDOT prior to completing/initiating tasks.	3
	Section Totals	10
2.	Quality Management	
2.2	Consultant completes all work in compliance with Federal, State, and Local regulations, policies, procedures and guidelines.	5
2.3	Design deliverables are accurate, and free of errors and inconsistencies.	5

<i>No.</i>	<i>Task</i>	<i>Weight</i>
	Consultant satisfactorily corrects identified inconsistencies or errors to ensure compliance with PennDOT, and as applicable, FHWA specifications.	
	<i>Section Totals</i>	<i>10</i>
3.	Work Performance	
3.7	Consultant completed Cultural Resources tasks accurately, as scoped, on budget, and within appropriate time frames.	10
	<i>Section Totals</i>	<i>10</i>
	<i>Overall Evaluation</i>	<i>30</i>

If No. 1.7 is not applicable, reassign the 3 points in weight to No. 1.3 (knowledge of Federal and State requirements...). When rating consultants, the following values are available.

Consultant Evaluations

<i>Rating</i>	<i>Value-Individual</i>	<i>Value-Overall</i>
Consistently Exceeds	1.00	95-100%
Exceeds Expectations	0.75	75-94.99%
Expected Performance	0.50	50-74.99%
Fails to Meet Expectations	0.25	25-49.99%
Consistently Fails	0.00	0-24.99%

Guidance is provided below for interpreting the six available criteria and assigning ratings. For the purposes of assigning ratings, the consultant is the prime or sub-consultant firm that provides the service. The principal investigator is the individual in the firm that is responsible for the technical product and services.

- *Project Management*

1.3 Do the principal investigator and team have professional knowledge of the National Historic Preservation Act, National Register Guidance, implementing regulations, the State History Code, and PHMC guidance?

Consistently Exceeds	principal investigator makes maximum use of flexibility in applying Section 106 to resolve cultural resource issues.
Exceeds Expectations	principal investigator provides precise and necessary information to resolve cultural resource issues
Expected Performance	principal investigator provides necessary information to resolve cultural resource issues
Fails to Meet Expectations	principal investigator mis-applies laws and regulations and must be corrected on procedural errors
Consistently Fails	principal investigator mis-applies laws and regulations and does not provide an acceptable product, even after PennDOT guidance

1.5 Do the principal investigator and team keep the District CRP(s) informed of project-related activities, including notification in advance of attendance at field views and meetings with the project team? Please note that unwillingness by the Prime to permit a principal investigator to communicate directly with the CRP(s) will preclude an Exceeds Expectations or Consistently Exceeds rating for the sub-consultant. Prime consultants that are unable to make accommodation for direct communication should be down-rated on their consultant evaluation.

Consistently Exceeds	principal investigator keeps CRP(s) informed, provides sufficient advance notice of meetings, and provides and follows a pre-determined update schedule. Principal investigator arranges and maintains direct communication with CRP(s) without intermediaries.
Exceeds Expectations	principal investigator keeps CRP(s) informed, provides sufficient advance notice of meetings. Principal investigator arranges and maintains direct communication with CRP(s) without intermediaries.
Expected Performance	principal investigator keeps CRP(s) informed, provides sufficient advance notice of meetings.
Fails to Meet Expectations	principal investigator keeps CRP(s) informed after actions only.
Consistently Fails	principal investigator does not communicate with CRP(s) in advance of submission of documentation.

1.7 Do the principal investigator and team consult with the CRP(s) before making any modifications in the work plan/prescription that comes out of the CRP scoping field view?

Consistently Exceeds	principal investigator recommends and receives approval from the CRP(s) for improvements to the scope of work prior to initiating tasks. Principal investigator assists in coordinating changes in scope of work with other consulting parties.
Exceeds Expectations	principal investigator recommends and receives approval from the CRP(s) for improvements to the scope of work prior to initiating tasks.
Expected Performance	principal investigator communicates with and obtains approval from CRP(s) prior to making a change in scope of work.
Fails to Meet Expectations	principal investigator makes changes in the scope of work that affect work hours and/or schedule without consulting with CRP(s).
Consistently Fails	principal investigator makes substantial changes in scope of work without consulting with CRP(s).

- *Quality Management*

2.2 Do the principal investigator and team's *fieldwork* follow the work plan/prescription from the CRP(s) as well as applicable laws and regulations, e.g. the National Historic Preservation Act, National Register Guidance, implementing regulations, the State History Code, and PHMC guidance, and, do the principal investigator and team demonstrate cooperation with the CRP(s) in ensuring accurate work?

Consistently Exceeds	In consultation with the CRP(s), principal investigator makes maximum use of flexibility in applying Section 106 in the field.
Exceeds Expectations	In consultation with the CRP(s), principal investigator's fieldwork is precise and necessary to resolve cultural resource issues.
Expected Performance	In consultation with the CRP(s), principal investigator's fieldwork resolves cultural resource issues.
Fails to Meet Expectations	principal investigator's fieldwork is inadequate to address cultural resource issues and must be redone or supplemented; and/or principal investigator level of effort in fieldwork is excessive for the work plan/prescription; and/or principal investigator fails to adequately coordinate fieldwork with the CRP(s).
Consistently Fails	principal investigator's fieldwork is inadequate to address cultural resources issues and despite repeated attempts to redo or supplement, remains inadequate.

2.3 Do the principal investigator and team's *documentation* and other deliverables follow the work plan/prescription from the CRP(s) as communicated in directions or comments, and, do the principal investigator and team demonstrate cooperation with the CRP(s) in ensuring accurate deliverables?

Consistently Exceeds	In consultation with the CRP(s), principal investigator provides concise and necessary documentation. Documentation has good readability.
Exceeds Expectations	In consultation with the CRP(s), principal investigator documentation is precise and necessary to resolve cultural resource issues.
Expected Performance	In consultation with the CRP(s), principal investigator documentation and other deliverables are adequate to answering the cultural resources issues.
Fails to Meet Expectations	principal investigator documentation and other deliverables do not adequately answer the cultural resource issues without substantial and/or repeated revisions; and/or principal investigator fails to adequately coordinate documentation with the CRP(s).
Consistently Fails	principal investigator directly coordinates with the State Historic Preservation Officer without the express consent of the CRP(s) [this is an automatic consistently fails*], and/or, principal investigator documentation and other deliverables do not address the necessary cultural resource issues, even after revisions.

*Any instance of unauthorized direct coordination with PHMC during the course of a project will trigger an interim rating.

- *Work Performance*

3.7 Are the cultural resources fieldwork and documentation done with respect to scope, on budget, and in a timely manner? * Equal weight should be given to budget and schedule.

Consistently Exceeds	principal investigator implements both cost-saving and time-saving measures to bring the work in under cost and ahead of schedule.
Exceeds Expectations	principal investigator implements either cost-saving or time-saving measures to bring the work in under cost or ahead of schedule.
Expected Performance	fieldwork and documentation are done within scope, on budget, and on schedule.
Fails to Meet Expectations	fieldwork and documentation are done within scope, but either in excess of budget or behind schedule.
Consistently Fails	fieldwork and documentation are done within scope, but both in excess of budget and behind schedule; or, fieldwork or documentation problems cause scheduling or budget problems in other preliminary design areas.

*It is the responsibility of the consultant to seek revisions to budget or schedule from PennDOT for unusual or unexpected circumstances.

- b) For any preliminary design contract where a cultural resource prime consultant or sub-consultant(s) is used, a separate evaluation should be prepared for each firm, using the above weights as guidelines. The CRP(s) managing the cultural resources studies conducted by a sub-consultant or Prime is responsible for completing the consultant rating as part of his/her job duties.
- c) For any preliminary design contract where cultural resources studies are completed by the prime contractor as part of the preliminary design, or where the sub-consultant is not exclusively a cultural resources specialist, it is the responsibility of the CRP to provide rating information to the Project Manager, who should then weigh cultural resource work in proportion to its importance to the whole contract. Using the above relative weights, Project Managers will be responsible for adjusting the rating basis for contracts where cultural resource studies are conducted.
- d) As needed, CRP(s) will prepare Interim evaluations. Interim evaluations should be used as guidance to consultants, where remedial action is warranted.

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LIST OF ACRONYMS

AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACM	Agency Coordination Meeting
ADE	Assistant District Executive
AFF	Archaeology Field Assessment Finding Form
APE	Area of Potential Effect
BHP	Bureau of Historic Preservation
BMS	Bridge Management System
BOPD	Bureau of Project Delivery
CE	Categorical Exclusion
CEE	Categorical Exclusion Evaluation
CFR	Code of Federal Regulations
CR	Cultural Resources
CRGIS	Cultural Resources Geographic Information System
CRM	Cultural Resource Management
CRP	Cultural Resource Professional
CSS	Context Sensitive Solutions
DD	District Designee
DE	District Executive
DEP	Department of Environmental Protection
DGS	Department of General Services
EA	Environmental Assessment
ECMETS	Environmental Commitment and Mitigation Tracking System
EIS	Environmental Impact Statement
EPDS	Environmental Policy and Development Section
FHWA	Federal Highway Administration
GIS	Geographic Information System
HAER	Historic American Engineering Record
HOP	Highway Occupancy Permit
IOP	Independent Oversight Program
ITS	Intelligent Transportation System
MAP-21	Moving Ahead for Progress in the 21 st Century
LOA	Letter of Agreement
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
NAGPRA	Native American Graves Protection and Repatriation Act
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966
NR	National Register
NRHP	National Register of Historic Places
OAG	Office of Attorney General
OCC	Office of Chief Counsel
OGC	Office of General Counsel

OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PAC	Pennsylvania Archaeological Council
PASPGP-3	Pennsylvania State Programmatic General Permit-3
PASS	Pennsylvania Archaeological Site Survey
PennDOT	Pennsylvania Department of Transportation
PHMC	Pennsylvania Historical and Museum Commission
PHRS	Pennsylvania Historic Resource Survey
PI	Public Involvement
PS&E	Plans, Specifications and Estimates
QA	Quality Assurance
QC	Quality Control
ROW	Right-of-Way
RPO	Rural Planning Organization
SAFTEA-LU	Safe, Accountable, Flexible, Transportation Equity Act: A Legacy for Users
SFF	Historic Structures Field Assessment Finding Form
SHPO	State Historic Preservation Office/Officer
SOL	Strike-off Letter
SR	State Route
STIP	Statewide Transportation Improvement Program
STP	Shovel Test Pit
TE	Transportation Enhancement
TIP	Transportation Improvement Program
TYP	Twelve Year Program
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USGS	United States Geographical Survey
WBS	Work Breakdown Structure

APPENDIX 1

Programmatic Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stipulations

FHWA shall ensure that the following measures are carried out:

I. Applicability and Scope

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

II. Responsibilities and General Requirements

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

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

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

C. Tribal Consultation

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

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

III. Project Review Responsibilities

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

A. Review by PennDOT District Designees

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

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

B. Review by PennDOT Cultural Resource Professionals

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

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

1) *Early Notification*

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

2) *Consulting Parties*

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

3) *Tribal Consultation*

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

4) *Involving the Public*

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

5) *Area of Potential Effect*

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

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

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

6) *Determine the Appropriate Level of Identification*

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

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

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

7) *Determination of Eligibility*

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

8) *No Historic Properties Affected*

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

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

9) *No Adverse Effect*

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

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

10) *Adverse Effect*

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

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

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

i) When the undertaking will adversely affect a National Historic Landmark,

ii) When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties,

iii) When PennDOT, the SHPO, and FHWA are not able to reach agreement on the resolution of adverse effects.

c) Resolution with a Letter of Agreement

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

d) Resolution with a Memorandum of Agreement

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

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

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

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

C. Review by SHPO

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

D. Use of Consultants in Project Review

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

IV. Documentation

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

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

A. Confidentiality

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

V. **Standard Treatments**

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

VI. **Treatment of Human Remains**

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

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

VII. Preparation of Archaeological Materials for Final Disposition

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

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

VIII. Post-Review Discoveries

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

IX. Emergencies

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

X. Annual Review and Monitoring

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

XI. Dispute Resolution

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

XII. Amendment

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

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

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

XIII. Termination

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

XIV. Duration

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

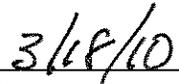
Execution and implementation of this PA evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings of the Federal-aid Highway Program and has afforded the ACHP a reasonable opportunity to comment.

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION



John M. Fowler, Executive Director



Date

FEDERAL HIGHWAY ADMINISTRATION

Renee Sigel, Division Administrator

Date

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

Jean Cutler

Jean Cutler, Director
Bureau for Historic Preservation

2/8/2010

Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Scott Christie, PE
Deputy Secretary for Highway Administration

Date

CONCURRING PARTIES:

SENECA NATION

Kathleen Mitchell, THPO

Date

TONAWANDA SENECA NATION

Roger Hill, Chief

Date

PRESERVATION PENNSYLVANIA

Mindy Crawford, Director

Date

FEDERAL HIGHWAY ADMINISTRATION

Renee Sigel
Renee Sigel, Division Administrator

3/8/2010
Date

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

Jean Cutler, Director
Bureau for Historic Preservation

Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Scott Christie
Scott Christie, PE
Deputy Secretary for Highway Administration

2/2/2010
Date

CONCURRING PARTIES:

SENECA NATION

Kathleen Mitchell, THPO

Date

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Roger Hill, Chief

Date

PRESERVATION PENNSYLVANIA

Mindy Crawford, Director

Date

FEDERAL HIGHWAY ADMINISTRATION

Renee Sigel, Division Administrator

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Jean Cutler, Director
Bureau for Historic Preservation

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Date

TONAWANDA SENECA NATION

Roger Hill, Chief

Date

PRESERVATION PENNSYLVANIA

Mindy Crawford, Director
Mindy Crawford, Director

2/5/2010
Date

PENNSYLVANIA ARCHAEOLOGICAL COUNCIL

Richard Geidel, President

Date

SOCIETY FOR PENNSYLVANIA ARCHAEOLOGY

Paul Nevin, President

Date

Approved as to Legality and Form

BY	<u>Michael K. Kline</u>	<u>2/3/2010</u>
	for Chief Counsel	Date <i>Jan 21/2010</i>
BY	<u>[Signature]</u>	<u>2-12-10</u>
	Deputy General Counsel	Date 2-12-10
BY	<u>Angela M. Elliott</u>	<u>2-24-10</u>
	Deputy Attorney General	Date

APPENDIX A.

Example Letter to Tribes

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

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

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

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

We appreciate your attention to this matter.

Sincerely,

[signed by FHWA - District Administrator]"

APPENDIX B
Training Requirements

1. Training for District Designees

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

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

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

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

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

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

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

3. Changes to the Section 106 regulations

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

APPENDIX C

Exempted Projects

Appendix C from the January 29, 2010 version of the Programmatic Agreement was revised November 23, 2010. A copy of the revised Appendix C can be found through a hyperlink in **Chapter 4 - Determining if Projects are Exempt from Further Section 106 Review**, page 1, under the title, "***Appendix C of the Section 106 Programmatic Agreement.***"

Appendix C from the January 29, 2010 version of the Programmatic Agreement was revised November 23, 2010. A copy of the revised Appendix C can be found through a hyperlink in Chapter 4 - Determining if Projects are Exempt from Further Section 106 Review, page 1, under the title, "Appendix C of the Section 106 Programmatic Agreement."

Exempted Projects

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

Section 1. Criteria

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

Section 2. Activities

A. Projects Exempted by District Designee

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

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

Appendix C from the January 29, 2010 version of the Programmatic Agreement was revised November 23, 2010. A copy of the revised Appendix C can be found through a hyperlink in Chapter 4 - Determining if Projects are Exempt from Further Section 106 Review, page 1, under the title, "Appendix C of the Section 106 Programmatic Agreement."

- 2) Rehabilitation of existing at-grade railroad crossings provided there is no change in grade.
- 3) Drainage improvements, including installation, replacement or rehabilitation, and cleaning activities associated with existing drains, dikes, headwalls, installation or replacement of culverts with an opening of 8 ft. or less in width, pipes and storm sewers.
- 4) Bridge Projects

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

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

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

- a) Installation or upgrade of regulatory signs, and railroad warning signs and devices; upgrade of advisory signs.
- b) Upgrade or replacement of less than 50 year old: lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers and/or noise walls. Exception: when in an urban (non-rural) area, the area must have been previously determined to be ineligible as a historic district.
- c) Installation of new lighting, fencing, retaining walls, traffic signals, curbing, advisory signs, barriers and/or noise walls, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible.
- d) Installation or replacement of Intelligent Transportation System (ITS) cameras and devices, and electronic advisory signs.

Appendix C from the January 29, 2010 version of the Programmatic Agreement was revised November 23, 2010. A copy of the revised Appendix C can be found through a hyperlink in Chapter 4 - Determining if Projects are Exempt from Further Section 106 Review, page 1, under the title, "Appendix C of the Section 106 Programmatic Agreement."

7) Sidewalks and Curbing

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

8) Transportation Enhancement/Safe Routes to School Projects

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

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

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

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

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

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

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

Appendix C from the January 29, 2010 version of the Programmatic Agreement was revised November 23, 2010. A copy of the revised Appendix C can be found through a hyperlink in Chapter 4 - Determining if Projects are Exempt from Further Section 106 Review, page 1, under the title, "Appendix C of the Section 106 Programmatic Agreement."

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

B. Projects Exempted by the District Cultural Resource Professional

1) Bridge Replacement Projects

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

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

APPENDIX D
Outline of Topics for Cultural Resources Handbook

Proposed Table of Contents for Cultural Resources Handbook

- I. Introduction
 - A. Governing Laws and Regulations
 - B. Handbook Applicability

- II. Roles and responsibilities
 - A. FHWA
 - B. USACE
 - C. SHPO
 - D. ACHP
 - E. Keeper of the National Register
 - F. Federally Recognized Tribes
 - G. Other Consulting Parties
 - H. The Public
 - I. PennDOT
 - J. Preservation Pennsylvania

- III. Early Coordination
 - A. Scoping
 - B. Area of Potential Effect

- IV. Determining if Projects are Exempt from Further Section 106 Review
 - A. Who may Determine if Projects are exempt from Further Section 106 Review
 - B. Conditions for Exempting Projects from Further Section 106 Review
 - C. List of Activities
 - D. Documenting Exemptions in CE Expert System

- V. Tribal Consultation
 - A. General Guidance
 - B. Specific Guidance

- VI. Public Involvement
 - A. Public Involvement Clearinghouse
 - B. Early Involvement
 - C. Public Involvement in Assessing Effect and Resolving Adverse Effects

- VII. Identification and Evaluation
 - A. Historic Resources
 - B. Archaeology

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

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

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

- XI. Permitted Projects under Section 106 or the State History Code
 - A. USACE permitted projects
 - B. Highway Occupancy Permits

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

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

XIV. Curation Standards

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

XV. Quality Control and Quality Assurance

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

APPENDIX E
Sample Letter of Agreement

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

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

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

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

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

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

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

Example Stipulations

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

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

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

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

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

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

Review and Documentation

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

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

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

FEDERAL HIGHWAY ADMINISTRATION

BY: _____ DATE: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____

OTHER CONCURRING PARTIES

Approved as to Legality and Form

BY: _____ DATE _____
For Chief Counsel

APPENDIX F
Standard Treatments

A. Standard Treatment Options to Avoid Adverse Effects

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

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

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

2. Archaeology

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

B. Standard Treatment Options to Mitigate Adverse Effects

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

1. Historic Bridges

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

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

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

APPENDIX 2

Memorandum of Understanding for State-Funded Projects

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**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

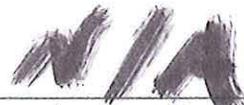
9/30/11
Date

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	

APPENDIX 3

Sample Programmatic Agreement

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Sample Programmatic Agreement

PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER (SHPO)
PURSUANT TO 36 CFR § 800.14(b)(1)
REGARDING THE _____ PROJECT

WHEREAS the Federal Highway Administration (FHWA) proposes what is proposed, name of project and location County, Pennsylvania; and

WHEREAS, the FHWA has established the name of project Area of Potential Effect (APE), as defined at 36 CFR Part 800.16(d), to be define/specify area of potential effect; and

WHEREAS the FHWA has initiated consultation with federally recognized tribes (Tribes and Nations) with ancestral ties to Pennsylvania who may attach religious or cultural significance to historic properties within the APE, namely list specific tribes; and

WHEREAS, the FHWA, pursuant to 36 CFR § 800.3, has made an effort to seek consulting parties, and has identified : List individual and organizations as consulting parties for the Project or has not identified any individuals or organizations that wish to be a consulting party. PennDOT will continue to involve the public and consulting parties as stipulated under the National Environmental Policy Act (NEPA) of 1969, as amended, and the National Historic Preservation Act (NHPA), as amended [16 U.S.C. § 470f], and its implementing regulations (36 CFR 800), in a manner consistent with PENNDOT's Public Involvement Procedures; and

(optional) WHEREAS, the FHWA, pursuant to 36 CFR Part 800.4(c), has determined that the specify historic property/properties, including citation of report and date of report, is/are eligible for inclusion in the National Register of Historic Places; and

(optional) WHEREAS, the FHWA has determined that the name of project will have an adverse effect on the above referenced property/properties; and

WHEREAS, the FHWA has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. Part 470 (NHPA), and its implementing regulations (36 CFR § 800) to resolve the adverse effect of the name of project on historic properties; and

WHEREAS, archaeological investigations have not been completed for the name of project, and list reason why archaeology not yet completed FHWA has elected to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. Part 470(f) through execution and implementation of a Programmatic Agreement (PA) pursuant to 36 CFR § 800.14; and

WHEREAS, the FHWA has invited the ACHP to participate in consultation, and the ACHP has accepted/declined; and

WHEREAS, the FHWA and the SHPO have also invited the Pennsylvania Department of Transportation (PennDOT) to participate in the consultation and to sign this Programmatic Agreement; and

(optional) WHEREAS the FHWA and the SHPO have invited the list tribes and other consulting parties to concur in this PA; and

NOW, THEREFORE, the FHWA and the SHPO agree that upon FHWA's decision to proceed with the name of project, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented by PennDOT:

1. Archaeological Resources

A. Prior to project construction, PennDOT shall complete an archaeological survey in the Area of Potential Effect (APE), defined for archaeological resources as all areas of the project where ground disturbance may occur. The archaeological survey will be conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (46 FR 44720-23), also taking into account the National Park Service's publication *The Archaeological Survey: Methods and Uses* (1978: GPO stock #024-016-00091) and the Bureau for Historic Preservation/Pennsylvania Historical and Museum Commission's *Guidelines for Archaeological Investigations in Pennsylvania* (November 2008). Any archaeological resources identified within the APE will be evaluated in accordance with 36 CFR 800.4 (c). PennDOT will submit a report on the findings of the survey to the FHWA, the SHPO, and any consulting Tribes and Nations, and other consulting parties for their review and comment. The SHPO's concurrence will be requested on the eligibility of archaeological properties. The review period will be thirty (30) days.

B. If eligible archaeological resources are identified within the APE, PennDOT will make a reasonable effort to avoid or minimize effects to these resources. If the eligible resources cannot be avoided, PennDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR 800.5. If the project will have an adverse effect on archaeological sites, and if these resources are eligible chiefly under National Register Criterion D (36 CFR § 63) for the significant information in prehistory or history they are likely to yield through data recovery, PENNDOT will ensure that a data recovery plan or a plan for alternative mitigation is developed in consultation with the SHPO. Any data recovery plan will be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37) and also will take into account the Council's publication *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*. The data recovery or alternative mitigation plan will be submitted to the FHWA, the SHPO, and any consulting Tribes for their review and comment. The review period will be 30 days. If archaeological resources are identified which are eligible under Criteria other than or in addition to Criterion D, PennDOT shall comply with 36 CFR § 800.6.

C. PennDOT will conduct Data Recovery excavation or an alternative mitigation according to the approved mitigation plan. At the conclusion of data recovery excavations or alternative mitigation, PennDOT will prepare a report(s) on the results of the data recovery or alternative mitigation. The report will be provided to the FHWA, the SHPO, and consulting Tribes for review and comment. Data recovery report(s) will meet professional standards set forth by the Department of the Interior's *Format Standards for Final Reports of Data Recovery Program* (42 FR 5377-79) and will be prepared consistent with the Bureau for Historic Preservation/Pennsylvania Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991). A draft report will be provided to the FHWA, SHPO, consulting Tribes and Nations and other consulting parties within a year of the completion of archaeological fieldwork. The review period will be 30 days. Any comments provided by the FHWA, SHPO, Tribes or Nations, or other consulting parties will be considered in the preparation of the final report. All final reports will be completed and submitted within 6 months of the close of the comment period.

D. If archaeological data recovery is necessary, the mitigation plan will include preparation of information for the general public. The specific materials to be produced will be determined individually for each site for which data recovery is necessary and may include but not be limited to pamphlets, brochures, artifact displays, exhibits, or booklets on the results of the excavations. The public information materials should explain the purpose of the project and the significance of the excavation of eligible sites. PennDOT shall consult with the FHWA, the SHPO and any consulting Tribes on the proposed public information materials and will provide a draft of any public information materials to the FHWA, the SHPO and any consulting Tribes for their review and comment prior to the finalization of the materials. The review period will be 30 days.

E. PennDOT shall ensure that any human remains and/or grave-associated artifacts encountered during the archaeological investigations are brought to the immediate attention of the FHWA, the SHPO, and any federally recognized Tribes that may attach religious and/or cultural significance to the affected property. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until FHWA, in consultation with the appropriate parties, has developed a treatment plan that considers the comments of the appropriate parties. All procedures will follow the guidance outlined in the National Park Service publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, taking into account the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) and the Pennsylvania Historical and Museum Commission's *Policy for the Treatment of Burials and Human Remains (1993)*.

F. All records and materials resulting from the archaeological investigations will be curated in accordance with 36 CFR Part 79 and the curation guidelines developed by the Pennsylvania Historical and Museum Commission (*specify date*).

- a) Artifacts recovered from Commonwealth property and all associated records will be curated at the State Museum of Pennsylvania or their designee.
- b) When artifacts are recovered from property not owned by the Commonwealth, PennDOT will explain to the property owner the importance of artifact donation and will request that the owner sign a gift agreement donating the artifacts to the State Museum. If the property owner does not wish to donate the artifacts, PennDOT will complete the necessary analyses prior to returning the artifacts, and will submit all records to the State Museum.
- c) Should a federally recognized Tribe or Nation request artifacts, FHWA will consider the request in consultation with the State Museum of Pennsylvania.
- d) PennDOT will submit archeological collections to the PHMC within three months of acceptance of the final report. PennDOT will be responsible for the curation fee of three hundred-fifty dollars (\$350) per cubic foot.

INSERT STIPULATIONS for Historic Structures if above-ground resources will be adversely effected

ADMINISTRATIVE CONDITIONS

A. Personnel Qualifications

PennDOT shall ensure that all archaeological work carried out pursuant to this Programmatic Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-9), and that all historic preservation work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, *The Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals* (48 FR 44738-9).

B. Late Discoveries

If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, PennDOT shall suspend work in the area of the discovery, and FHWA shall comply with 36 CFR Part 800.13 by consulting with the SHPO and, if applicable, federally recognized Tribes or Nations that attach religious and/or cultural significance to the affected property. The FHWA will notify the SHPO, the ACHP, and, if applicable, any federally recognized Tribes or Nations within one working day of the discovery. The FHWA, PennDOT, the SHPO and, if applicable, any such federally recognized Tribes or Nations will consult or preferably meet at the location of the discovery within seventy-two (72) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery.

C. Amendments

Any party to this Programmatic Agreement may propose to FHWA that the Programmatic Agreement be amended, whereupon FHWA shall consult with the other parties to this Programmatic Agreement to consider such an amendment in accordance with 36 CFR § 800.6(c)(7).

D. Resolving Objections

1. Should any party to this Programmatic Agreement object in writing to the FHWA regarding any action carried out or proposed with respect to the name of project or implementation of this Programmatic Agreement, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a) Advise the FHWA that the ACHP concurs in FHWA's proposed response to the objection, where-upon the FHWA shall respond to the objection accordingly;
 - b) Provide the FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c) Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by the FHWA in accordance with 36 CFR § 800.7(c)(4) and Part 110(1) of NHPA.
2. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
3. The FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's

responsibility to carry out all actions under this Programmatic Agreement that are not the subjects of the objection shall remain unchanged.

E. Resolution of Objections by the Public

At any time during implementation of the measures stipulated in this Programmatic Agreement, should an objection pertaining to any such measure or its manner of implementation be raised by a member of the public, FHWA shall notify the parties in this Programmatic Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Programmatic Agreement to resolve the objection.

F. Review of Implementation and Sunsetting

1. If the stipulations have not been implemented within two years after execution of this Programmatic Agreement, the parties to this agreement shall review the Programmatic Agreement to determine whether revisions are needed. If revisions are needed, the parties to this Programmatic Agreement shall consult in accordance with 36 CFR § 800 to make such revisions.
2. If the terms of this Programmatic Agreement have not been implemented by *insert number* years from date of signed Programmatic Agreement, this Programmatic Agreement shall be considered null and void. In such event FHWA shall so notify the parties to this Programmatic Agreement, and if it chooses to continue with the name of project, shall re-initiate review of the name of project in accordance with 36 CFR § 800.

G. Termination

3. Any signatory may terminate this MOA by providing notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA will require compliance with 36 CFR 800.
4. If at any time during the course of the Project, PennDOT cancels the project, or withdraws its request for federal funding, PennDOT will notify the FHWA. The FHWA will notify the other signatories and concurring parties to the PA and the Advisory Council on Historic Preservation that FHWA is terminating the agreement. The FHWA, in consultation with those parties, will consider the effects of any project related activities undertaken prior to project cancellation or withdrawal of the federal funding request and will assess its responsibilities and obligations pursuant to 36CFR § 800 and determine steps to terminate the Agreement

Execution of this Programmatic Agreement by the FHWA and the SHPO, and implementation of its terms, evidence that FHWA has taken into account the effects of the undertaking on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: (sign) _____ Date: _____
(Print name)

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By(sign) _____ Date: _____
(Print name)

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: (sign) _____ Date: _____
(Print name)

CONCUR:

Tribes and Other Consulting Parties, if applicable

<i>Approved as to Legality and Form</i>	
BY _____ for Chief Counsel	_____ Date
BY _____ Deputy General Counsel	_____ Date
BY _____ Deputy Attorney General	_____ Date

APPENDIX 4

Two Party Memorandum of Agreement Template

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Sample Two-Party MOA

MEMORANDUM OF AGREEMENT
 BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND
 THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER (SHPO)
 PURSUANT TO 36 CFR § 800.6(b)(1)
 REGARDING THE County/SR/Section/Name PROJECT

WHEREAS, the Federal Highway Administration (FHWA) proposes what is proposed, name of project (Project) and location County, Pennsylvania; and

WHEREAS, the FHWA has established the Project's area of potential effect (APE), as defined at 36 CFR § 800.16(d), to be define/specify area of potential effect; and

WHEREAS, the FHWA has initiated consultation with federally recognized tribal organizations (Tribes and Nations) with ancestral ties to Pennsylvania who may attach religious or cultural significance to historic properties within the APE, namely the list specific tribes; and

WHEREAS, the FHWA, pursuant to 36 CFR § 800.3, has made an effort to seek consulting parties, and *has identified : List individual and organizations as consulting parties for the Project or has not identified any consulting parties.* PennDOT will continue to involve the public and consulting parties as stipulated under the National Environmental Policy Act (NEPA) of 1969, as amended, and the National Historic Preservation Act (NHPA), as amended [16 U.S.C. § 470f], and its implementing regulations (36 CFR 800), in a manner consistent with PENNDOT's Public Involvement Procedures; and

WHEREAS, the FHWA, pursuant to 36 CFR § 800.4(c), has determined that the name of property/properties is/are eligible for inclusion in the National Register of Historic Places; and

WHEREAS, the FHWA, pursuant to 36 CFR § 800.5(d)(2), has determined that the Project will have an adverse effect on specify historic property/properties; and

WHEREAS, the FHWA has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. Part 470 (NHPA), and its implementing regulations (36 CFR § 800) to resolve the effects of the Project on historic properties; and

WHEREAS, the FHWA and the SHPO have also invited the Pennsylvania Department of Transportation (PennDOT) to participate in the consultation and to sign this Memorandum of Agreement (MOA); and

WHEREAS, the FHWA and the SHPO have invited the list tribes and other consulting parties to concur in this MOA; and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the Adverse Effect of the Project on historic properties and has invited the ACHP to participate in consultation, and the ACHP has accepted/declined; and

NOW, THEREFORE, the FHWA and the SHPO agree that, upon FHWA's decision to proceed with the name of project, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the project on historic properties.

Stipulations

The FHWA shall ensure that the following stipulations are implemented by PennDOT:

INSERT STIPULATIONS

Administrative Conditions

A. Personnel Qualifications

PennDOT shall ensure that all archaeological work carried out pursuant to this MOA is carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-9), and that all historic preservation work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, *The Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals* (48 FR 44738-9).

B. Late Discovery

If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, PennDOT shall suspend work in the area of the discovery, and FHWA shall comply with 36 CFR Part 800.13 by consulting with the SHPO, the ACHP, and, if applicable, federally recognized tribal organizations that attach religious and/or cultural significance to the affected property. The FHWA will notify the SHPO and, if applicable, any such federally recognized tribal organizations within one working day of the discovery. The FHWA, PennDOT, the SHPO and, if applicable, any such federally recognized tribal organizations will meet at the location of the discovery within seventy-two (72) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery.

C. Amendments

Any party to this MOA may propose to the FHWA that the MOA be amended, whereupon the FHWA shall consult with the other parties to this MOA to consider such an amendment in accordance with 36 CFR § 800.6(c)(7).

D. Resolving Objections

1. Should any party to this MOA object in writing to the FHWA regarding any action carried out or proposed with respect to the Project or implementation of this MOA, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the Advisory Council on Historic Preservation (ACHP) including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

- a) Advise the FHWA that the ACHP concurs in FHWA's proposed response to the objection, where-upon FHWA shall respond to the objection accordingly;
 - b) Provide the FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c) Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by FHWA in accordance with 36 CFR § 800.7(c)(4) and Part 110(1) of NHPA.
2. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
 3. The FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.

E. Resolution of Objections by Public

Should an objection pertaining to historic preservation or the implementation of the terms of this MOA be raised by a member of the public in a timely and substantive manner, the FHWA shall notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

F. Review of Implementation and Sunsetting

1. If the stipulations have not been implemented within two years after execution of this MOA, the parties to this agreement shall review the MOA to determine whether revisions are needed. If revisions are needed, the parties to this MOA shall consult in accordance with 36 CFR § 800 to make such revisions.
2. If the terms of this MOA have not been implemented by insert number years from the date of the signed MOA, this MOA shall be considered null and void. In such event the FHWA shall so notify the parties to this MOA, and if it chooses to continue with the Project, shall re-initiate review of the Project in accordance with 36 CFR § 800.

G. Termination

1. Any signatory may terminate this MOA by providing notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this MOA will require compliance with 36 CFR 800.
2. If at any time during the course of the Project, PennDOT cancels the project, or withdraws its request for federal funding, PennDOT will notify the FHWA. The FHWA will notify the other signatories and concurring parties to the PA and the Advisory Council on Historic Preservation that FHWA is terminating the agreement. The FHWA, in consultation with those parties, will consider the effects of any project related activities undertaken prior to project cancellation or withdrawal of the federal funding request and will assess its responsibilities and obligations pursuant to 36CFR § 800 and determine steps to terminate the Agreement.

Execution of this MOA by the FHWA and the SHPO, and implementation of its terms, evidence that FHWA has taken into account the effects of the undertaking on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By *(sign)* _____ Date: _____
(Print name)

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By *(sign)* _____ Date: _____
(Print name)

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: *(sign)* _____ Date: _____
(Print name)

CONCUR:

Tribes and Other Consulting Parties, if applicable

<i>Approved as to Legality and Form</i>	
BY _____ for Chief Counsel	_____ Date
BY _____ Deputy General Counsel	_____ Date
BY _____ Deputy Attorney General	_____ Date

APPENDIX 5

Letter of Agreement Template

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

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

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

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

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

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

Example Stipulations

The resolution of Adverse Effects may include one or more of the following stipulations.

1. The *name of bridge or building* will be recorded following state level recordation guidelines in accordance with *How to Complete the Pennsylvania Historic Resources Survey Form (PHMC 2001)*. The documentation will include a narrative and photographs. Copies of the final document will be provided to the SHPO for retention in the State Archives.
2. The *name of bridge or building* will be recorded to HABS/HAER standards in accordance with the *Secretary of Interior Standards and Guidelines for Architectural and Engineering Documentation (FR 44730-34, 1989)*. The documentation will include a narrative and photographs. Archival copies of the final document will be provided to the SHPO and the National Park Service.
3. The *name of bridge or building* will be recorded with large format photographs in accordance with the *Secretary of Interior Standards and Guidelines for Architectural and Engineering Documentation (FR 44730-34, 1989)*.

4. A bridge marketing plan will be prepared for name of bridge.
5. A National Register nomination will be prepared for name of historic property in accordance with *How to Complete the National Register Registration Form* (National Register Bulletin 16A).
6. An historic structures survey will be prepared for describe, in accordance with *How to Complete the Pennsylvania Historic Resources Survey Form (PHMC 2001)*.
7. A historic context will be prepared for name following guidance in *Guidelines for Evaluation and Registering Archaeological Properties* (National Register Bulletin 36) and *How to Apply the National Register Criteria for Evaluation* (National Register Bulletin 15).
8. Original historic documents (e.g. diaries, maps, blueprints, histories, personal papers) describe will be copied or scanned for retention in the State Archives.
9. The original historic marker or plaque will be salvaged and incorporated into the new design, or displayed, or donated to an organization or other entity, or other.
10. The design and/or landscaping for the bridge, and/or other improvements will be developed in consultation with the SHPO and will ensure visual compatibility with the character of the name of historic district (SOL 470-98-71).
11. Data recovery excavations will be conducted at name of archaeological site following the established data recovery plan.
12. Mitigation for the adverse effect to name of archaeological site will include one or more of the following: syntheses, exhibits, displays, research, analyses, contexts, preservation in place, other, following the established alternative mitigation plan.
13. Each mitigation plan will include a plan for public outreach/information and will include one or more of the following:
 - a) Insert Number pamphlets, or brochures, or posters, or booklets, describe content will be prepared and distributed to name of organization(s).
 - b) a website will be created describe contents of website.
 - c) a school lesson plan will be developed for describe contents of lesson plan.
 - d) a video will be developed for describe content of video.
 - e) an informational kiosk will be created and installed describe what will be included in the kiosk.
 - f) a wayside marker or informational display will be created and installed describe the content of the marker or display.

Review and Documentation

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

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

- VI. Treatment of Human Remains;
- VII. Preparation of Archaeological Materials for Final Disposition;
- VIII. Post Review Discoveries.

FEDERAL HIGHWAY ADMINISTRATION

BY: _____ DATE: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: _____ DATE: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: _____ DATE: _____

OTHER CONCURRING PARTIES

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APPENDIX 6

Memorandum of Understanding Template

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Sample MOU

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
REGARDING THE County/SR/Section/Name PROJECT**

WHEREAS, the Pennsylvania Department of Transportation (PennDOT) proposes to what is proposed, name of project (Project) and location County, Pennsylvania; and

WHEREAS, PennDOT has determined that the Project will have an adverse effect on specify historic property/properties a property determined eligible for listing in the National Register of Historic Places, and has consulted with the PHMC pursuant to the Pennsylvania History code, 37 PA Cons. Stat. Sections 507 & 508; and

(Optional) WHEREAS, PennDOT has initiated consultation with federally recognized tribal organizations (Tribes and Nations) with ancestral ties to Pennsylvania who may attach religious or cultural significance to historic properties within the project area, namely the list specific tribes; and

WHEREAS, PennDOT has made an effort to inform and involve the public in the Project in a manner consistent with PENNDOT's Public Involvement Procedures; and

NOW, THEREFORE, PennDOT and PHMC agree that the name of project shall be administered in accordance with the following stipulations to satisfy PennDOT's responsibility under the Pennsylvania History Code, 37 PA Cons. Stat. Sections 507 & 508.

Stipulations

INSERT STIPULATIONS

Administrative Conditions

A. PennDOT shall ensure that all archaeological work carried out pursuant to this MOU is carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-9), and that all historic preservation work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, *The Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals* (48 FR 44738-9).

B. Any party to this MOU may request that it be amended, whereupon the parties shall consult to consider such an amendment.

C. If the terms of this MOU have not been implemented by insert number years from the date of the signed MOU, this MOU shall be considered null and void. In such event PennDOT shall notify the parties to this MOU, and if it chooses to continue with the Project, shall re-initiate review of the Project in accordance with Section 508 of the Pennsylvania History Code.

D. If PennDOT determines that it cannot implement the terms of this MOU, or if PHMC determines that the MOU is not being properly implemented, PennDOT or PHMC may propose that this agreement be terminated.

E. The party proposing to terminate this MOU shall notify all party to this MOU, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.

F. Should such consultation fail, PennDOT or the PHMC may terminate the MOU by notifying all parties.

Execution of this MOU by PennDOT and the PHMC, and implementation of its terms, evidence that PennDOT has satisfied its responsibilities under the Pennsylvania History Code, Sections 507 & 508, for the Project and has consulted and sought the advice of PHMC.

PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

By: _____ Date: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

<i>Approved as to Legality and Form</i>	
BY _____ for Chief Counsel	_____ Date
BY _____ Deputy General Counsel	_____ Date
BY _____ Deputy Attorney General	_____ Date

APPENDIX 7

Sample MOA or PA Amendment for Time Extension

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Sample MOA or PA Amendment for Time Extension

AMENDMENT TO THE
PA or MOA (specify) BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING THE name of project, County/SR/Section,
PENNSYLVANIA

WHEREAS, the duration of the effective period of the PA/MOA (specify) has expired/will expire (specify) on specify date; and

WHEREAS, the name of project has not been completed and an extended duration of the PA/MOA is required; and

WHEREAS, specify which, if any, stipulations of the PA/MOA have been completed.

WHEREAS, specify which stipulations have not been completed.

WHEREAS, the FHWA's responsibility to carry out all actions under the original PA/MOA, not altered through the execution of this amendment, shall remain unchanged.

Add any other Whereas clauses, as appropriate.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth below, the parties agree, with the intention of being legally bound, to amend the original PA/MOA as follows:

1. Administrative Condition specify the appropriate Administrative Condition is amended to extend the date for completion of all stipulations to no later than Specify date. Should the stipulations not be completed by this date the PA/MOA will be considered null and void. In such an event FHWA shall so notify the parties to the PA/MOA, and if it chooses to continue with the Project, shall reinstate review of the Project in accordance with 36 CFR § 800.

Add any other stipulations, as appropriate

FEDERAL HIGHWAY ADMINISTRATION

BY: _____

DATE: _____

(Insert name)

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: _____

DATE: _____

(Insert name)

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

(Insert name)

CONCUR:

Tribes or other Consulting Parties

<i>Approved as to Legality and Form</i>	
BY _____	_____
for Chief Counsel	Date
BY _____	_____
Deputy General Counsel	Date
BY _____	_____
Deputy Attorney General	Date

APPENDIX 8

Cover Transmittal Letter for Submitting Archaeological Collections to PHMC

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EXAMPLE COVER LETTER FOR SUBMITTAL OF COLLECTIONS TO PHMC

County, Municipality
SR , Section
Archaeological Artifact Collection
ER#

Kurt W. Carr
Senior Curator, Archaeology
The State Museum of Pennsylvania
Attn: Janet Johnson

District Executive
Engineering District X-0
Pennsylvania Department of Transportation

We are submitting for curation the following archaeological collection(s) recovered during state appropriate phase of archaeological investigation (Phase I Identification Survey, Phase II Evaluation, Data Recovery Excavations) for the above referenced project. List Site number(s) or Isolated Find Number(s) Also included is a copy of the final report(s) list type of report(s) as well as all other original documentation pertaining to the archaeological investigations. List number of boxes/cubic feet are included with this submission. The collection has been prepared in accordance with your indicate date curation guidelines.

The Department of Transportation is the legal owner of the property from which the artifacts were recovered and is transferring control to the State Museum

OR

The artifacts were recovered from private property. Enclosed is an Accessions Form and Gift Agreement signed by the property owner along with an attached inventory of the artifact collection.

Please send the invoice for the enclosed collection(s) to the District **OR** the consultant. Upon receipt of payment, please sign the bottom of this transmittal form and return it to District X-0. This will acknowledge your receipt of the collections and curation fee. If you have any questions, please contact District Archaeologist at (list phone number and/or e-mail address).

Enclosure

Cc: FHWA Lead Professional
BOPD Project Development Engineer
Jean Cutler, PHMC BHP
EPDS
District Environmental Manager
District Archaeologist

Janet R. Johnson
PHMC

Date

APPENDIX 9

Emergency Relief Programmatic Agreement (PA)

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DATE: April 8, 2005 438-05-01

SUBJECT: Emergency Relief Projects Programmatic Agreement

TO: All District Executives

FROM: Dean A. Schreiber, PE /s/
Director
Bureau of Design

On January 14, 2005, a 10-year Programmatic Agreement (PA) for Emergency Relief Projects was executed by the FHWA, the Advisory Council on Historic Preservation, the State Historic Preservation Officer, PENNDOT, and several Native American tribes regarding emergency projects.

The Agreement is applicable when a state of emergency is declared by the President of the United States or the Governor of Pennsylvania. Projects that will utilize funds from FHWA's Emergency Relief Program qualify for expedited Section 106 review under this PA. The PA has a category of exempt activities that do not require any Section 106 review and includes such activities as repair of roads to pre-emergency conditions, and repair or replacement of traffic lights, signs, road lighting, guiderails, culverts and retaining walls. Non-exempt activities require the District Cultural Resource Team to view these projects in the field and assess whether the emergency activities would have an adverse effect on historic resources. Each District has a Cultural Resource Team assigned to assist the District. If there are any questions regarding who is on the Cultural Resource Team, please contact the Environmental Manager.

The nature of the emergency and how quickly emergency activities will begin will determine the type of consultation and documentation prepared, and the length of the review period. The FHWA, SHPO, and any tribes who have signed the PA will receive information concurrently.

- 1) Immediate rescue and salvage operations conducted to preserve life and property are exempt from Section 106 review. If possible, the Cultural Resource Team will visit the disaster site and issue an immediate finding of effect in the field. The team will coordinate closely with work crews to avoid, minimize or mitigate adverse effects where possible. Documentation will be prepared and submitted to the SHPO within 45 days of the field view, for purposes of the administrative record and for post-event auditing. There is no review period.

2) When emergency activities will begin within 30 days of the emergency event, documentation and review will follow a highly expedited process. The FHWA and SHPO will have seven (7) days to comment on information provided by PENNDOT via phone conversations, electronic media, or meetings. PENNDOT will provide information on the eligibility of the property(s) affected, the proposed emergency activities, and any measures that would be implemented to take into account the effects of the activities.

3) Emergency activities undertaken from 30 to 180 days of the emergency event will also follow an expedited process. The PENNDOT Cultural Resource Team will submit documentation to the SHPO, FHWA and Tribes, as appropriate. The FHWA, SHPO, and Tribes will have 15 days to object to a finding of no historic properties affected or no adverse effect. When the effect will be adverse, the Cultural Resource Team will prepare a Commitment Letter (in lieu of a Memorandum of Agreement) describing the resolution of adverse effects. The FHWA, SHPO, and tribes, where appropriate, will be invited to concur prior to the 15-day period, or, will have 15 days to object to the proposed resolution of adverse effects.

Documentation has been largely streamlined, using forms; however, the findings will need to be made available to the public as well as to the signatories to the Programmatic Agreement. There will be a review of the PA every five (5) years. The PA will be in effect until December 31, 2014, but may be extended by the consent of the signatories. Any comments or questions on this SOL can be directed to Jack A. Rokavec, Chief of the Environmental Quality Assurance Division, at 717-787-1024.

Page 3

4380/CAK/ib
(717) 783-9700

cc: G. L. Hoffman, P.E., Deputy Secretary for Highway Administration
J. A. Cheatham, P.E., Division Administrator, FHWA
M. G. Patel, P.E., Chief Engineer
D. A. Schreiber, P.E., KB7, BOD
E. G. Madden, KB8, PO
All Highway Administration Bureau Directors
All District Environmental Managers
S. Heil, BOS, KB5
J. A. Rokavec, P.E., KB7, BOD
C. J. Campbell, KB7, BOD
M. D. Lombard, KB7, BOD
I. C. Beckerman, Ph.D., KB7, BOD
C. A. Kula, KB7, BOD
Consulting Engineers Council of PA
2040 Linglestown Rd., Suite 200
Harrisburg, PA 17110
Attn: John VanNatta

**PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY
ADMINISTRATION, THE PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, THE PENNSYLVANIA STATE HISTORIC PRESERVATION
OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING EMERGENCY RELIEF PROGRAM**

WHEREAS the Commonwealth of Pennsylvania may experience an event triggering a state of emergency, as declared by the President of the United States and/or the Governor of Pennsylvania; and,

WHEREAS the Federal Highway Administration (FHWA) has made funds available through FHWA's Emergency Relief Program under Section 125 of Title 23, U.S.C., for the repair of damage to bridges, streets, roads, or highways on the Federal-aid system, and other Federal-aid highways; and,

WHEREAS the regulations for the Emergency Relief Program allows for emergency repairs (23 CFR § 668.103), defined as those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of: minimizing the extent of the damage; protecting remaining facilities; or, restoring essential traffic; as well as permanent repairs or restoration done as part of the emergency repairs, approved by FHWA (23 CFR § 668.109), hereby collectively referred to as Emergency Activities; and,

WHEREAS Emergency Activities meet the criteria for a categorical exclusion (CE) as defined in the Council of Environmental Quality regulation 40 CFR § 1508.4, and, do not normally require any further approvals by the Administration [23 CFR § 771.117(c)(9)] under the National Environmental Policy Act (NEPA) (Sections 4321-4347 of Title 42, U.S.C.), and,

WHEREAS FHWA has determined that Emergency Activities may have effects on historic properties as defined in 36 CFR § 800.16; and,

WHEREAS FHWA conducts Emergency Activities that, while they are undertakings as defined in 36 CFR § 800.16, are so unlikely to affect historic properties that, in the view of FHWA and the Pennsylvania State Historic Preservation Officer (SHPO), it is unnecessary for FHWA to identify historic properties in the vicinity of some such undertakings, because no such properties shall be affected; and,

WHEREAS necessary and timely completion of Emergency Activities do not permit FHWA to carry out the Section 106 review process in the time frames set forth in 36 CFR § 800.4 through 800.6, FHWA has elected to comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f); hereinafter Section 106) through execution and implementation of a Programmatic Agreement (PA) pursuant to 36 CFR § 800.14(b); and,

WHEREAS the signatories to this PA desire to expedite the Section 106 review for Emergency Activities; and,

WHEREAS FHWA has consulted with the Advisory Council on Historic Preservation (ACHP) and the SHPO in accordance with 36 CFR § 800.12(a) and 36 CFR § 800.14(b) to develop this PA; and,

WHEREAS, the FHWA and the SHPO have invited the Pennsylvania Department of Transportation (PennDOT) and federally recognized Tribes (Tribes) that may attach religious and/or cultural significance to any affected property within the APE of any specific Emergency Activity pursuant to 36 CFR § 800.3(f)(2), namely, the Absentee-Shawnee Tribe of Oklahoma, the Cayuga Nation, the Delaware Nation of Oklahoma, the Delaware Tribe of Indians of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Oneida Indian Nation, the Oneida Nation of Wisconsin, the Onondaga Nation, the Seneca Nation of Indians, Seneca-Cayuga Tribe of Oklahoma, the Shawnee Tribe, the St. Regis Mohawk Tribe, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Seneca Nation, and the Tuscarora Nation to participate in the consultation and concur in this PA; and,

WHEREAS, the benefits of seeking comment from the public and interested parties need to be balanced with the health and public safety of the public;

NOW, THEREFORE, FHWA, the SHPO, and the ACHP agree that upon the decision of the FHWA to proceed with an Emergency Activity, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking(s) on historic properties.

STIPULATIONS

The FHWA shall ensure that the following measures are carried out:

I. Applicability

This PA may be activated by the FHWA consistent with 23 CFR § 668 upon the declaration of a state of emergency by the President of the United States and/or the Governor of the Commonwealth of Pennsylvania. Emergency Activities under the stated declaration may follow the process in this PA for complying with 36 CFR Part 800.

- II.** Eligible Emergency Activities are listed in Appendix A. All eligible emergency activities are reviewed and approved by FHWA. Construction for the eligible Emergency Activity normally will be completed within 180 days of the occurrence of the emergency event. The procedures in this Agreement apply only those emergency activities for which construction is completed within 180 days of the emergency event unless the FHWA finds there to be an

extenuating circumstance to construction completion that would warrant a minor time deviation.

III. Maintenance of CR Professional Staff

PennDOT shall maintain staff – either permanent employees or consultants (referred to in this PA as “CR Professionals”) - who meet the National Park Service’s Professional Qualifications Standards (36 CFR § 61- Appendix B) in archaeology, history, or architectural history whose duties shall include implementing this PA, and who have received training under the current Minor Projects Programmatic Agreement (executed December, 1996).

III. Exempt Activities

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)]. If possible, where there are immediate threats to life or property, the CR Professionals will visit the project site and issue an immediate finding of effect. Where measures are needed to avoid adverse effects, or to minimize or mitigate adverse effects, the CR Professionals shall work closely with the work crews to ensure all reasonable measures are implemented. Documentation of the finding shall be provided to FHWA and the SHPO no later than 45 days after the field view.
- B. Additionally, the following shall be considered exempt from further consideration under Section 106 or under this PA. PennDOT need not identify historic properties in the vicinity of Emergency Activities that fall into any of the classes listed below, provided that the Activities are limited to the activities specified, are not part of larger undertakings, will not cause any new ground disturbance or extend outside of the existing right-of-way, and are not located within a known historic district, an individually listed property, a known archaeological site, or a National Historic Landmark. Within known historic properties, PennDOT need not consider the effects of Emergency Activities that fall into any of the classes listed below, provided that the Activities are limited to the activities specified, are not part of larger undertakings, and repairs are made in-kind:
 - 1. Repair of road to pre-disaster conditions: number of lanes; shoulders; medians; curvature; grades; clearances; and side slopes; and no substantial changes in elevation or road width.
 - 2. Repair or replacement of traffic control devices such as traffic signs, delineators, pavement markings, ramp and traffic surveillance control systems, and traffic signals.
 - 3. Repair or replacement of road lighting.

4. Repair or replacement of other road appurtenances, such as curbs, berms, sidewalks and fences.
5. Repair or replacement of roadway safety elements, such as barriers, guardrails, and impact-attenuation devices.
6. Repair or replacement of culvert systems (structures less than or equal to 8 feet in span length), to include headwalls and wingwalls, without altering the pre-disaster disturbed earth cross-section.
7. Placement of fill at bridge piers, wingwalls, and abutments to repair scour.
8. Repair or replacement of retaining walls.
9. Channel cleaning.
10. All other activities necessary to quickly restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities [i.e. temporary roads, bridges, barriers, Maintenance and Protection of Traffic (MPT) devices].

IV . Review of Non-Exempt Activities

PennDOT shall carry out the following procedures for emergency activities not identified as exempt in Stipulation III. The following measures apply to all non-exempt emergency activities carried out under this Agreement, whether completed within the first 30 days after the emergency event or within 180 days of the event:

A. Identification and Evaluation of Historic Properties

1. The PennDOT's Cultural Resource (CR) Professional team (the archaeologist and architectural historian covering the District in which the Activity is to occur) shall field view the Activity with the goal of quickly determining which Activities may have an adverse effect on historic properties.
2. PennDOT's CR Professionals shall identify and evaluate historic properties within the area of potential effect of individual undertakings conducted under this program, as per 36 CFR § 800.4 and in a manner consistent with the Secretary of Interior's Standards and Guidelines for Identification. National Register eligibility for state- and locally-owned bridges will be determined by the results of the current (1996) Historic Bridge Survey or any subsequent modifications or updates to that survey developed by the FHWA in consultation with PennDOT and SHPO. PennDOT shall review

inventory information provided in the Cultural Resources GIS, and shall consult on eligibility with Tribes that may attach traditional religious and cultural significance to historic properties (hereafter, appropriate Tribes).

3. The area of potential effect on above ground historic properties for all Emergency Activities is limited to within 100 feet of the project boundary. PennDOT's CR Professionals shall evaluate any above ground properties 50 years old or older present within 100 feet of a proposed bridge removal, repair, or replacement for eligibility, as per 36 CFR § 800.4 if an Activity has the potential to introduce effects not previously in place.

If the area to be impacted by an Emergency Activity has been previously disturbed, based on a field examination by PennDOT's CR Professionals supported by any appropriate information, no further evaluation to determine presence of National Register-eligible archaeological historic properties (hereinafter archaeological resources) shall be required. If the area to be impacted has not been previously disturbed, PennDOT's CR Professionals shall *either*.

- a. Assess the need for further archaeological investigation. In areas subject to potential effect to known significant archaeological resources or in areas where there is a high potential for significant archaeological resources that may be impacted by a Emergency Relief project, PennDOT shall conduct an archaeological study to identify archaeological resources in a manner consistent with the Secretary's Standards, and the Pennsylvania Guidelines for Archaeological Investigations (July, 1991). PennDOT shall prepare and transmit the results of any work consistent with Stipulation VII below and provide it to the SHPO and other consulting parties as part of the effect documentation in Stipulation IV.B below.

or,

- b. For temporary construction activities, PennDOT may place geotextile and 18 inches of clean fill over the area to be impacted. No further archaeological study shall be necessary to identify archaeological resources in this area, because no such resources are likely to be affected.

B. Assessment of Effect

1. For each Emergency Activity where historic properties have been identified in the area of potential effect, PennDOT's CR Professionals shall assess the effects of the Activity on these properties consistent with 36CFR § 800.4 and 800.5.

2. PennDOT's CR Professional assessment of effects from Emergency Activities on Historic Properties per 36 CFR § 800.16(l) shall be made in good faith, based on knowledge available to the CR Professional at the time of the field assessment, consideration of NR listed Historic Districts and listed properties, and known archaeological sites, as available in the Cultural Resources Geographic Information System, and best professional judgment.
3. Special provisions for Bridges
 - a. Any bridge rehabilitation of a non-historic bridge that does not involve a change of elevation or width or removal of decorative features shall be considered to have no effect on historic resources within the APE.
 - b. When replacement of a non-historic bridge in the area of potential effect of an historic district is considered not to be an adverse effect, design plans shall be submitted to the SHPO for comment.
 - c. Rehabilitations of historic bridges that are compatible with the historic and architectural qualities of the bridge in terms of scale, massing, color, and materials, and are responsive to the recommended approaches to rehabilitation or new construction set forth in the Secretary's Standards for Rehabilitation shall be considered No Adverse Effect.
 - d. Rehabilitation of historic bridges that does not meet Secretary's Standards for Rehabilitation shall be considered an adverse effect. Removal and replacement of an extant historic bridge shall be considered an adverse effect. Removal and/or replacement of an historic bridge destroyed or significantly damaged during the event shall be considered a no effect or a no adverse effect.

C. Resolution of Adverse Effects

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

(when appropriate, per Sub-heading A above) and proceed with the Emergency Activity without further review by the ACHP;

- b. protection of the site by placing fill over geotextile - PennDOT shall consult with the SHPO and appropriate Tribe(s) (when appropriate), and, with concurrence or no objections within the comment period, proceed with the Emergency Activity without further review;
 - c. site excavation or implementation of an alternative mitigation. If FHWA in consultation with the SHPO and appropriate Tribe(s) (when appropriate) agrees that a data recovery or alternative mitigation is appropriate, PennDOT shall develop a mitigation implementation plan. PennDOT shall submit the mitigation plan to the SHPO, FHWA, and appropriate Tribe(s) (when appropriate), and, with concurrence or no objections within the comment period, proceed with implementation of the plan.
3. FHWA shall ensure that when historic bridges may be adversely affected and the mitigation includes state level recordation, the bridges are recorded following the methodology set forth in Appendix D. Where practical, salvage of significant bridge elements should be considered, and where an interest is demonstrated, salvage undertaken and provided to the Commonwealth or interested local repository identified in consultation with the SHPO.

V. Expedited Consultation on Emergency Activities implemented within 30 days.

- A. This section applies only to actions that will be implemented within 30 days after the occurrence of a disaster or emergency event. If the expedited review procedures apply, PennDOT may proceed with the emergency action after completing the following review:
1. PennDOT will provide the SHPO, FHWA and appropriate Tribes with available information about the condition and eligibility of the property, the proposed action, and prudent and feasible measures that would take the effect into account, requesting comments within 7 days. PennDOT may provide this information in writing, or through telephone conversations, electronic media, or meetings, at its discretion. The SHPO, FHWA, and appropriate Tribes may provide comments to PennDOT within 7 days of receipt of the information, unless PennDOT determines the nature of the emergency action warrants a shorter time period. Any comments received will be taken into account by PennDOT in finalizing any treatment of historic properties.
 2. Should the SHPO and other parties not comment within 7 days, PennDOT

may proceed with the action based on available information.

3. If the SHPO, FHWA, or a consulting tribe object to PennDOT's proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, PennDOT will consult with the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA will request ACHP's advice in accordance with 36 CFR § 800.2(b)(2). ACHP will advise FHWA within 7 days of receipt of the request, unless FHWA determines the nature of the emergency action warrants a shorter time period.

B. For all other activities, PennDOT will conduct Section 106 review pursuant to Stipulation VI. or VII.

C. FHWA may extend the period to which this Stipulation applies for an additional 30 days by notifying the ACHP, the SHPO, appropriate Tribe(s), and PennDOT, providing a justification for the extension.

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

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

A. PennDOT shall submit documentation of the CR Professionals' finding of effect to the SHPO, FHWA, and appropriate Tribes for comment, using the documentation forms provided in Appendix C. Each project submittal shall also provide a project location map and at least one image of the project area (digital photograph is OK).

B. The SHPO, FHWA, and appropriate Tribes shall have 15 days from receipt of adequate documentation in which to object to a finding of no historic properties affected or no adverse effect. If no party objects to an adequately documented finding of no historic properties affected or no adverse effect, PennDOT may proceed with the emergency action.

C. If PennDOT or FHWA determines that the proposed action may have an adverse effect on historic properties, PennDOT will propose actions to avoid or minimize the adverse effects. PennDOT will document the resolution of Adverse Effects in a Commitment Letter in lieu of an individual Memorandum of Agreement, and provide it concurrently to the SHPO, FHWA, and each

appropriate Tribe. The Commitment Letter shall also be made available to the public at that time, soliciting comments. If the SHPO, FHWA, and the appropriate Tribe(s) provide concurrence to PennDOT prior to 15 days, or, if no objection is received within 15 days of receipt of the Commitment Letter, FHWA may direct PennDOT to proceed with the Commitments. FHWA shall send a copy to the ACHP. PennDOT shall notify the public prior to construction.

- D. For resolution of adverse effects to archaeological historic properties, archaeological data recovery may be a solution. Upon completion of fieldwork for archaeological data recovery excavations, PennDOT will provide an opportunity to meet on-site within 2 working days with the SHPO, FHWA, and appropriate Tribe(s) to consider whether additional fieldwork is necessary, or whether PennDOT may proceed with the Emergency Activity. FHWA shall ensure that a management summary is provided to the consulting parties and that notes documenting any field discussions are submitted to the parties prior to FHWA's determination that the archaeological fieldwork has been completed. FHWA shall ensure that a report of investigations consistent with the Pennsylvania Bureau for Historic Preservation's (1991) Guidelines for Archaeological Investigations shall be submitted to the SHPO for review and concurrence within 1 year of the completion of fieldwork.

VII. Archaeological Documentation

- A. For all archaeological investigations conducted for the purposes of identifying and evaluating historic resources, archaeological documentation shall consist of an abbreviated report format (1991 Guidelines) that provides a project description, field methodology, field results, analysis and interpretation, a 7.5 Minute USGS Topographic map showing the project location, a large-scale map (1"=200' or larger) showing testing units, profile maps as appropriate, artifact catalogs as appropriate, and geomorphological report as appropriate. Digital photography is acceptable for the abbreviated report. A copy of the report shall be included with the CR Professional's finding of effect form (Appendix C). By prior consultation with the SHPO and any consulting Tribe, alternative documentation may be submitted.
- B. Four copies of the archaeological report (other than a report of Data Recovery Excavations) and BHP Report Summary Form will be submitted to the SHPO for file within 180 days of the date of the CR Professional's finding of effect for the project. One copy of the archaeological report will be submitted to each consulting Tribe, as appropriate.

ADMINISTRATIVE CONDITIONS AND STIPULATIONS

VIII. Definition of Parties

For the purposes of this PA the term "parties to this PA" means any signatory or concurring party to this programmatic agreement.

IX. Consultation with Indian Tribes

Oh behalf of the FHWA, PennDOT will solicit comments from appropriate Tribes for emergency actions that may affect properties of traditional religious and cultural significance to a Tribe. The FHWA shall retain the ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Tribes. Notwithstanding any other provision of this agreement, FWHA shall honor the request of any Tribe for direct government-to-government consultation regarding an undertaking covered by this PA.

X. Professional Expertise:

FHWA shall ensure that all historic structure and bridge surveys carried out pursuant to this PA are completed by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Architectural History (Appendix B), and that all archaeological studies carried out pursuant to this PA are conducted by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Archeology (Appendix B).

XI. Late Discovery

If previously unidentified archaeological or historic properties are discovered after PennDOT has completed its Section 106 review through the process outlined in this PA, activities that would disturb the property(ies) in that portion of the project shall stop immediately. PennDOT shall immediately contact the FHWA, the SHPO, and each appropriate Tribe. Prior to further construction or activities in immediate vicinity of the historic property(ies), PennDOT shall coordinate following Stipulation VI, as appropriate.

XII. Treatment of Human Remains

PennDOT shall ensure that any human remains and grave-associated artifacts encountered during archaeological investigations are brought to the attention of the FHWA, SHPO, and any Tribe(s) that may attach religious and/or cultural significance to the affected property within 24 hours of discovery. No activities that might disturb or damage the remains shall be conducted until the FHWA, upon

consultation with all parties, determines whether excavation is necessary and/or desirable. For Native American human remains discovered on Federal lands, the Federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). For all other lands, PennDOT and FHWA will consult with any consulting Tribe(s), and consider the PHMC's *Policy for the Treatment of Burials and Human Remains* (1993); and, other state laws and regulations regarding human remains.

XIII. Curation of Archaeological Materials

- A. FHWA shall ensure that artifacts recovered from archaeological investigations conducted under this PA and under the Commonwealth's jurisdiction shall be curated consistent with the methodology in the Pennsylvania State Guidelines. When artifacts are recovered from private property, PennDOT shall request a deed of gift from the property owner. The FHWA shall determine the disposition of all publicly held collections and associated materials, in consultation with the SHPO and each appropriate Tribe, and with consideration of the State History Code (37 Pa.C.S. § 101).
- B. PennDOT shall reimburse institutions curating these collections for their costs.

XIV. Dispute Resolution:

For emergency actions reviewed under Stipulation VI of this agreement:

- A. Should the SHPO, FHWA, ACHP, or any other consulting party (including consulting parties participating in the review of specific Undertakings subject to this Agreement) object in writing within time frames established by this Agreement to any plans, specifications, determinations, or other actions subject to review pursuant to this Agreement, PennDOT will consult with that party for not more than 15 days to resolve the objection.
- B. If the objection is resolved within 15 days, FHWA and PennDOT may proceed with the disputed action in accordance with the resolution.
- C. If FHWA determines within 15 days that the objection cannot be resolved, FHWA will forward to ACHP all documentation relevant to the objection, including FHWA's proposed resolution. Within 15 days of receipt, ACHP will
 - 1. Concur in FHWA's proposed resolution, whereupon FHWA will respond to the objection accordingly; or
 - 2. Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the objection; or

3. Notify FHWA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FHWA will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).
- D. Should ACHP not respond within 15 days, FHWA may assume ACHP's concurrence in FHWA's proposed resolution.
- E. FHWA will take into account any ACHP recommendations or comments, and any comments from the other signatories or consulting parties, in reaching a final decision regarding the objection. The signatories will continue to implement all other terms of this Agreement, that are not subject to objection.
- F. FHWA will provide the signatories with its final written decision regarding any objection resolved pursuant to this Stipulation.
- G. FHWA may authorize any disputed action to proceed, after resolving the related objection pursuant to this Stipulation.
- H. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FHWA will notify the other signatories in writing and take the objection into consideration. FHWA will consult with the objecting party and, if that party so requests, the other signatories, for not more than 15 days. In reaching its decision regarding the objection, FHWA will take into consideration all comments from these parties. Within 14 days after closure of this consultation period, FEMA will provide the other parties with its written decision. FHWA's decision will be final.
- I. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36CFR § 800.4(c)(2).

XV. Review and Duration

- A. PennDOT shall provide a list of all non-exempted Emergency Activities under each declared emergency to all Parties, within one year of the declaration. PennDOT shall keep copies of all documentation of non-exempt projects for a period not less than three years, and shall make this documentation available for inspection to all Parties and the Public.
- B. FHWA shall conduct a review of this PA every five (5) years, and shall invite the ACHP, the SHPO, and the Tribes to participate in that review.
- C. This Agreement will automatically expire on December 31, 2014, unless prior to this date the FHWA, PennDOT, SHPO and Council agree in writing to extend it for an additional term.

XVI. Amendments

Any party to this PA may propose to FHWA that the PA be amended, whereupon FHWA shall consult with the other parties to this PA to consider such an amendment.

XVII. Termination

- A. Any Party may propose to the other Parties that this PA be terminated.
- B. The party proposing to terminate this PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should such consultation fail, FHWA, the SHPO, or the ACHP may terminate the PA by so notifying all parties.
- D. Should this PA be terminated, FHWA shall comply with 36 CFR Part 800 or another applicable Programmatic Agreement with regard to individual undertakings covered by this PA.

Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: *Kougi Vonderweert* Date: *12/3/04*

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: *Jan A. Cutler* Date: *12-8-04*

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: *M. Lobato* Date: *12/3/04*

Seneca-Cayuga Tribe of Oklahoma

By: _____ Date: _____

Shawnee Tribe

By: _____ Date: _____

Delaware Tribe of Indians of Oklahoma

By: _____ Date: _____

Delaware Nation of Oklahoma

By: _____ Date: _____

Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: Kay W. Anderson Date: 12/3/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: Jan H. Cutler Date: 12-8-04

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: M. Colatel Date: 12/3/04

Seneca-Cayuga Tribe of Oklahoma

By: S. R. Howard Date: 12/14/04

Shawnee Tribe

By: _____ Date: _____

Delaware Tribe of Indians of Oklahoma

By: _____ Date: _____

Delaware Nation of Oklahoma

By: _____ Date: _____

Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: *Kougi Henderson* Date: 12/3/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: *Jan A. Cutler* Date: 12-8-04

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: *M. Calate* Date: 12/3/04

Seneca-Cayuga Tribe of Oklahoma

By: _____ Date: _____

Shawnee Tribe

By: _____ Date: _____

Delaware Tribe of Indians of Oklahoma

By: _____ Date: _____

Delaware Nation of Oklahoma

By: *Edgar L. French* Date: 12-14-04

Appendix A

Eligible Emergency Activities

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

- (1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).
- (2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

- (1) Repair to or reconstruction of seriously damaged highway elements (including bridges) as necessary to restore the facility to pre-disaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of way (ROW);
- (2) Restoration of stream channels outside the highway ROW when:
 - (i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and
 - (ii) The work is necessary for satisfactory operation of the highway system involved;
- (3) Actual PE and construction engineering costs on approved projects;
- (4) Emergency repairs;
- (5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster;
- (6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair;
- (7) Temporary work to maintain essential traffic, such as raising roadway grade during a period of flooding by placing fill and temporary surface material;
- (8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame. Such grade raises are not considered to be a betterment for the purpose of 23 CFR § 668.109(b)(6); and
- (9) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

Appendix B

National Park Service Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR § 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology, and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Appendix C
Consultation Forms

PennDOT Emergency Relief Projects
Section 106 Consultation

Date: ER #: MPMS #:
County: Municipality:
S.R.: Section: Name:
Lead Agency: FHWA

To: Jean H. Cutler, Director
 Bureau for Historic Preservation
 Pennsylvania Historical and Museum Commission

From: Dean A. Schreiber, Director
 Bureau of Design
 Pennsylvania Department of Transportation

As per agreement between the Pennsylvania Historical and Museum Commission and the Pennsylvania Department of Transportation, the Department finds that the above-referenced Emergency Relief project has **No Effect or No Adverse Effect on historic properties.**

The following documentation is included:

- a copy of the Cultural Resource Field Assessment Form
- a description of the project
- the location of the project mapped on a USGS 7.5 Minute Topographic Map
- abbreviated archaeological survey report
- Other: _____

Historic Structures CR Professional

Archaeological CR Professional

If the Department does not receive an objection within 7/15 days of your receipt of a notification of this finding, the Department shall proceed with this project without further review. If you have any questions please contact Ira Beckerman @ 772-0830.

cc: FHWA
 EQAD, CR Section
 District Environmental Manager:
 CR Professional Submitters:

To be completed by District Professional:

- No objection received from SHPO.
Proceed with Project.
- Objection received from SHPO.
Do not proceed until EQAD contacted

Date: _____

By: _____

SHPO rec'd date:

Date of 7/15 days:

**Emergency Relief Projects
Cultural Resource Field Assessment and Finding
Historic Structures - 1**

County _____

SR _____

Sec _____

Municipality(ies) _____

Name of Project _____

USGS Quadrangle(s) _____

Project Description Attached:

1. Area of Potential Effect Description:

2. Sources Checked:

- National Register Files
- PHRS Files
- Historic Maps
- Local Historical Society _____
- Other _____

3.

Identified Eligible Properties	Reference			
	PHRS Files	PHRS Survey Form	Abbrev. Resource Survey Form	Hist. Res. Survey Report

Environmental Review Number _____

**Emergency Relief Projects
Cultural Resource Field Assessment and Finding
Historic Structures - 2**

Comments:

4. Finding:

- No Historic Properties Present or Affected
- No Historic Properties Present
- No Historic Properties Affected
- No Historic Properties Adversely Affected

Basis for Finding:

5. Recommendation for Next Action:

CR Professional: _____ Date: _____

Environmental Review Number _____

**Emergency Relief Projects
Cultural Resources Field Assessment and Finding
Archaeology - 1**

County _____ SR _____ Sec _____

Municipality _____

Name of project _____

USGS Quad _____

Project Description Attached:

1. Area of Potential Effect Description:

2. Sources Checked:

- PASS Files
- Historic
Maps _____
- USGS County Soil Map(s) _____
- Other _____

3. Known Archaeological Resources:

Historic

Prehistoric

4. Type and estimated amount of disturbance and how estimated:

Environmental Review Number _____

**Emergency Relief Projects
Cultural Resources Field Assessment and Finding
Archaeology - 2**

Name of Project: _____

5. Archaeological potential:
Historic: H M L Prehistoric: H M L

Justification:

6. Finding:
- No Archaeological Resources Present or Affected
 - No Archaeological Resources Present
 - No Archaeological Resources Affected
 - No Archaeological Resources Adversely Affected

Basis for finding:

7. Recommendations for next action (if appropriate):

CR professional: _____ Date: _____

Environmental Review Number _____

Appendix D

Documentation Level for Historic Bridges

State Level Documentation

A. Building Description and History

The applicant must submit a completed Pennsylvania Historic Resource Form (PHRS) including a description and history of the building/structure. The date of construction and historic uses should be documented by reference to historic maps, deeds or other appropriate sources listed in the Bureau for Historic Preservation Biographical References.

B. Photography

Photographs must show all exterior elevations of the building/structure as well as any significant interior features (if applicable). Photographs should be labeled in pencil with the name and address (including county) of the property, date and view shown in the photograph (i.e. east elevation). Photographs must be taken with 35mm or larger format cameras with black and white print film. Photographs should be placed in acid-free envelopes and not mounted to the PHRS forms. Prints may be 3 ½" x 5" or larger. Negatives must be housed in polypropelene sleeves, labeled with the same information as the photographs, and submitted to PHMC/Bureau for Historic Preservation.

C. Map Location

Submit a U.S.G.S. quadrangle, 7.5 minute map showing the outline of the property associated with the buildings (for building recordations). A site map must also be submitted which includes the property boundaries and the location of the buildings outlining the walls at ground level (building's footprint), noting the dimensions and indicating porches with dashed lines.

APPENDIX 10

Programmatic Agreement for FEMA Programs

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**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY OF THE DEPARTMENT
OF HOMELAND SECURITY, THE PENNSYLVANIA STATE HISTORIC
PRESERVATION OFFICER, AND
THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY,
FOR ALL FEMA PROGRAMS**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security makes assistance available to states/commonwealths, communities, and other eligible entities for disaster housing; hazard mitigation; prevention of and preparedness for emergencies and disasters; and the repair, restoration and replacement of public infrastructure pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206, (Stafford Act), the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001 et seq., the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2201 et seq., and implementing regulations contained in Title 44 of the Code of Federal Regulations; and

WHEREAS, FEMA has determined that implementation of these Programs will result in Undertakings that may affect properties listed in or eligible for the National Register of Historic Places (historic properties), and FEMA has consulted with the Pennsylvania State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, implementing Section 106, herein referred to as Section 106, and 110(f) of the National Historic Preservation Act (NHPA), 16 U.S.C. Part 470; and

WHEREAS, FEMA has invited the Advisory Council on Historic Preservation (ACHP) to enter into formal consultation and become a signatory party to this document thus affording the ACHP a reasonable opportunity to comment on all FEMA Programs identified in the Preamble, pursuant to 36 CFR Part 800, implementing Section 106; and the ACHP has declined to formally consult or to become a signatory party, pursuant to 36 CFR 800.6(a)(1)(iii); and

WHEREAS, FEMA has determined that there are no Federally recognized Indian tribes (Tribes) in the Commonwealth of Pennsylvania; however, the implementation of these Programs may result in Undertakings that have an effect on historic properties that have religious and cultural significance to currently unidentified, non-resident Tribes, and FEMA may request that these Tribes participate as a project specific consulting party to fulfill the requirements of Section 106; and

WHEREAS, the Commonwealth of Pennsylvania will receive financial and technical assistance from FEMA and will in turn provide monies and other assistance to eligible sub-grantees, and as such the Pennsylvania Emergency Management Agency (PEMA) will typically be responsible for administering these Programs, has participated in this consultation, and has been invited to enter into this Programmatic Agreement (Agreement); and

WHEREAS, FEMA, PEMA and SHPO acknowledge that implementation of these Programs will be more effective if, pursuant to 36 CFR §800.14(b), an Agreement is in place to define roles and responsibilities in the Section 106 review process and promote efficiency so that the effects of Undertakings on historic properties may be considered while minimizing delays to FEMA's and PEMA's delivery of disaster and mitigation assistance;

NOW, THEREFORE, FEMA, PEMA and SHPO agree that all Programs will be administered in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities for all Undertakings. FEMA will not approve funding of any Undertaking until it is reviewed pursuant to this Agreement.

STIPULATIONS

To the extent of its legal authority, and in coordination with SHPO and PEMA, FEMA will require that the following measures be implemented:

I. LEAD AGENCY COORDINATION

- A. When FEMA is determined to be the Lead Agency, and has obtained the concurrence of the other participating Federal Agency or agencies, FEMA will coordinate the Section 106 review activities of all Federal agencies.
- B. If a sub-grantee requests FEMA funding for a project with the same scope of work and Area of Potential Effect that was previously reviewed by another Federal agency or for which the Section 106 consultation has been completed, additional Section 106 consultation will not be required on FEMA's part. The sub-grantee, PEMA, or other Grantee will certify to FEMA that a project has not changed in scope or detail (i.e., that the project plans bear the same date as those referenced in the previous comment letter) and document prior SHPO concurrence relative to this Undertaking by submitting the SHPO's concurrence or comment letter for inclusion in FEMA's project records.

II. APPLICABILITY

- A. This Agreement applies to the Programs implemented after execution by all parties, and will remain in effect for a period of five (5) years from the date of execution. In the event that a specific disaster declaration occurs prior to the expiration date, the Agreement will remain in effect for that specific disaster so long as the disaster remains open for funding.
- B. FEMA has determined that the following types of activities have limited potential to affect historic properties and FEMA has no Section 106 responsibilities. These activities include: pursuant to 44 CFR Part 206.110(m), implementation of the Programs as related to assistance to individuals and households (Section 408 of the Stafford Act, Individuals and Households Program and the Other Needs Assistance Program), with the exception of ground disturbing activities and construction related to Sec. 206.117(b)(1)(ii) (Temporary housing), 206.117(b)(3) (Replacement housing), and 206.117(b)(4) (Permanent housing construction). [67 FR 61452, Sept. 30, 2002; 67 FR 62896, Oct. 9,

2002]; program activities enumerated in 44 CFR §10.8 (select FEMA National Environmental Policy Act Categorical Exclusions); and 411 (Individual and Family Grant Programs), 412 (Food Coupons and Distribution), 415 (Legal Services), and 416 (Crisis Counseling Assistance and Training) of the Stafford Act.

- C. FEMA will determine when the Undertaking is in conformance with one or more of the Allowances in Appendix A – Programmatic Allowances. After documenting this decision in writing in the project files, FEMA may approve funding for such Undertakings, without SHPO review.
- D. This Agreement will only apply to historic properties that retain National Register (NR) integrity, pursuant to 36 CFR Part 60. FEMA will make this determination, prepare a list of those historic properties no longer retaining integrity resulting from the emergency event, and make this information, including photographs, locational information and written damage description, available for the SHPO.
- E. For all other activities, FEMA will conduct Section 106 review in accordance with Stipulation V. or VI. of the Agreement.

III. GENERAL

A. Professional Qualifications:

1. FEMA will use Federal, Pennsylvania Commonwealth agency, or contractor staff who meet the Secretary of Interior's (SOI's) Professional Qualifications Standards (Qualifications), as determined by FEMA's Federal Preservation Officer (FPO), in the required disciplines, in making National Register eligibility and effect determinations and overseeing compliance with this Agreement.
2. FEMA acknowledges that some individuals or groups, including Native American groups, possess special expertise related to Traditional Cultural Properties, and FEMA may utilize this expertise and consult with them for the purpose of site identification and determining if any such properties are eligible for the National Register, and may as per IV.A.3, invite them to participate as consulting parties in the Section 106 process.

- B. All time designations will be in calendar days, unless otherwise noted. If the SHPO does not comment on FEMA's determination related to a proposed action within an agreed upon time frame, FEMA may assume the SHPO's concurrence with FEMA's determination and proceed accordingly.

C. FEMA responsibilities:

FEMA may request that Federal, Pennsylvania Commonwealth agency, or sub-grantee staff who meet the Qualifications in III.A.1 conduct the identification and evaluation of historic properties on behalf of FEMA, as described in 36 CFR 800.4(b, c).

1. FEMA will review all NR eligibility and effect determinations resulting from the performance of these delegated activities.
2. FEMA will provide the SHPO with an annual written report of activities of the previous calendar year on or before March 31 of the following year, for each year that this Agreement is in effect. Upon the request of any signatory party, a meeting will be held subsequent to the issuance of the annual report to review the report and/or discuss issues in greater detail. This Annual Report will summarize the actions taken to implement the terms of this Agreement, including:
 - a. A listing of the projects requiring a cultural resources survey;
 - b. The number of properties added to the Pennsylvania Archaeological Site Survey (PASS) and the Pennsylvania Historic Resource Inventory;
 - c. A summary of the treatment measures undertaken;
 - d. A summary of archaeological activities; and
 - e. Suggestions, if any, for additional actions that could be considered for inclusion in Appendix A.
3. Prior to authorizing the release of funds for individual projects requiring special conditions pursuant to this Agreement, FEMA will fully inform PEMA or other Grantee of all stipulations and conditions in writing to insure that they are understood and conveyed to the sub-grantee, pursuant to III.E.1.
4. FEMA will ensure that all fieldwork and documentation resulting from Undertakings pursuant to this Agreement are consistent with applicable SHPO guidelines.

D. SHPO responsibilities:

1. The SHPO will respond to a request for concurrence with FEMA's Section 106 determinations within the time frames required by this Agreement.
2. The SHPO *may* delegate some or all of its responsibilities under this Agreement to persons who are not currently members of the SHPO staff and who will serve as SHPO representatives with respect to the actions and decisions required by this Agreement. If, as a result of a specific Disaster, SHPO staff is unable to meet the time frames of this Agreement, SHPO will consult with FEMA at the earliest possible time to seek a solution.

E. PEMA Responsibilities:

1. As grantee, PEMA, with FEMA's assistance in accordance with Stipulation III.C.4, will ensure that all sub-grantees are fully informed as to their

responsibilities stipulated in this Agreement. This includes providing them with information about in-kind repairs, pursuant to the Secretary of Interior's Standards, and insuring the Sub-grantees understand and acknowledge any additional conditions that may be placed upon construction, repair or hazard mitigation projects as a result of Section 106 consultation or other means of compliance as provided for in this Agreement. PEMA will also ensure that sub-grantees understand that failure to comply with Undertaking-specific conditions could jeopardize Federal participation in the project.

2. Although the administrative action of acquiring properties in buyout projects is exempt from Section 106 review, as per the guidelines in Appendix A, VIII, PEMA will ensure that sub-grantees secure the properties from physical alteration including demolition, illegal entry, and damage until the requirements of the Agreement are fulfilled. PEMA will ensure that sub-grantee communities agree to these provisions as a condition of the grant before FEMA will release any project funding. The above would follow project consultation under the standard review stipulation.

IV. INITIAL COORDINATION FOLLOWING DECLARATION OF THE DISASTER

Upon the Presidential declaration of a disaster, FEMA will notify SHPO of the Declaration and provide a list of the designated counties. After establishing the Joint Disaster Field Office (JDFO), FEMA will coordinate with the SHPO and PEMA to establish points of contact and then initiate a historic scoping process; where the SHPO will be provided pertinent information from the Preliminary Damage Assessments (PDA), program issues and processes will be discussed, along with any special protocols or other considerations related to implementation of the Agreement.

A. FEMA will:

1. Ensure information related to the Section 106 review process is presented to sub-grantees at the Public Assistance Program applicant briefings and kickoff meetings;
2. Consult with other Federal agencies having jurisdiction for Undertakings related to the Programs to ensure lead Federal agency is established, per Stipulation I.A.;
3. Develop with the SHPO a plan for involving the public in the Section 106 review process in accordance with Stipulation X of the Agreement; and
4. Upon learning that a National Historic Landmark (NHL) has been damaged as a result of a disaster, FEMA will notify the SHPO and the Secretary of Interior's NHL Program Manager at the National Park Service Regional Office in Philadelphia, Pennsylvania.

- B. The SHPO will:
1. Identify a SHPO staff or consultants to consult with FEMA on its Section 106 responsibilities;
 2. Provide FEMA with general guidance on special historic areas of concern or specific property types that may need special consideration;
 3. Provide FEMA historic preservation specialists access to available SHPO maintained web-based databases for historic property information;
 4. Assist FEMA, when possible, in identifying any communities, Tribes, organizations or individuals that may have an interest in historic properties affected by the Disaster; and
 5. Assist local jurisdictions in evaluating the historic sensitivity of identified temporary debris staging and reduction sites.
- C. FEMA and SHPO will agree upon disaster specific interim reporting related to this Agreement.
- D. The SHPO and PEMA are encouraged to work together to plan, identify and approve mitigation initiatives, such as, but not limited to, locating temporary debris management sites prior to or at the beginning of disaster recovery activities.

V. EXPEDITED PROJECT REVIEW FOR EMERGENCIES

- A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 (36 CFR §800.12(d)). (“Emergency situations: Applicability”).
- B. As a result or in anticipation of the Disaster, but within 30 days after the time of discovery of the emergency, FEMA may be requested to authorize funding through its *response and recovery programs* (Public Assistance Program, Individuals and Households Program) for emergency protective measures in response to an immediate threat to human health and safety or improved property, which may adversely affect historic properties. For all Undertakings that the Federal Coordinating Officer (FCO), in coordination with the Federal Preservation Officer (FPO), determines are of an emergency nature as defined in Section 102(1) of the Stafford Act, and are not exempt from Section 106 review in accordance with Stipulation V.A. above, FEMA will conduct the following expedited review:
1. The expedited review period will begin at the time that FEMA determines that an emergency action is required, and will remain in effect for the time necessary to implement this expedited review, but for not more than 30 days after the time of discovering the emergency;

2. The FCO or designated representative will certify in writing to the SHPO the need for FEMA to conduct expedited project review for individual Undertakings. Should FEMA determine that it is necessary to extend the expedited review period beyond 30 days, FEMA will, in 30-day increments, as needed, and in coordination with FEMA's FPO, advise the SHPO and ACHP, in writing, prior to the expiration of the 30 day period in question;
3. If it appears that an emergency action will adversely affect a historic property during this expedited review period, FEMA will provide the SHPO with available information about the condition of the property, the proposed action, and prudent and feasible measures that would take the adverse effect into account, requesting the SHPO's comments. FEMA may provide this information through written requests, telephone conversations, meetings, or electronic media. In all cases, FEMA will be clear that an "expedited project review" is being requested;
4. The SHPO will respond to any FEMA request for comments within three (3) working days after receipt, unless FEMA determines the nature of the emergency action warrants a shorter time period. If SHPO concurs with the proposed measures or if FEMA incorporates SHPO recommendations into the action, FEMA will provide SHPO with final project documentation, including a discussion of all actions taken with respect to the proposed mitigation measures, at the earliest convenient time after the emergency action is taken; and
5. If FEMA does not accept the recommendations provided by the SHPO pursuant to this Stipulation, or the SHPO objects to FEMA's proposal to use the emergency review procedure and/or proposed treatment measures, FEMA will consult with the SHPO to resolve the dispute. If FEMA is unable to resolve the dispute, FEMA will seek the ACHP's comments. FEMA will request that the ACHP provide final comment to FEMA within seven (7) days after receipt of FEMA's request, pursuant to 36 CFR 800.12 (b)(2), unless FEMA determines the nature of the emergency action warrants a shorter time period.

VI. STANDARD PROJECT REVIEW

The signatories of this Agreement will carry out the following review for all non-emergency Undertakings that do not fall under one or more of the Programmatic Allowances (Section II.C) related to the delivery of FEMA's disaster *response and recovery programs* and FEMA/PEMA's *mitigation or other programs* (Hazard Mitigation Grant Program, Pre-Disaster Mitigation Program, Flood Mitigation Assistance, etc), with the noted exception of the different time frames for SHPO and consulting party comments relative to the two types of Programs.

- A. Establish Area of Potential Effects (APE): For all project reviews of standing structures the APE will be the individual facility (as defined in 44 CFR §206.201(c)) when an Undertaking is limited to the in-kind repair or rehabilitation of the facility's interior or exterior. For all other Undertakings, qualified FEMA staff will establish the APE, including those that may affect archaeological properties. FEMA may also consult with

the SHPO and invite other appropriate parties (such as local governments and the public) to provide information related to the APE.

- B. In accordance with the intent of 36 CFR §800.4(b,c) (“Identify historic properties” and “Evaluate historic significance”), qualified FEMA staff will determine if the APE contains properties or is likely to contain properties (including archaeological properties) that are listed in or potentially eligible for the National Register. FEMA may consult with the SHPO if it is deemed necessary.
- C. If no historic properties are present, or if an Undertaking is designed to avoid affecting the character defining features or integrity of such historic properties as defined in 36 CFR §800.16(1), a qualified FEMA staff will make a determination of “no historic properties affected” in accordance with 36 CFR §800.4(d)(1). FEMA will notify the SHPO of this finding and provide supporting documentation (including applicable SHPO project review forms). Unless the SHPO objects to this finding within 15 days for *response and recovery* programs and 30 days for *mitigation programs*, after receipt, FEMA will document the project file and Section 106 review will be concluded.
- D. If an Undertaking may affect identified historic properties, or if the SHPO objects to the determination of “no historic properties affected” after receipt, FEMA will consult with the SHPO to apply the criteria of adverse effect, pursuant to 36 CFR §800.5(a)(1), or determine if the Undertaking meets the Secretary of Interior Standards for the Treatment of Historic Properties (Standards), or any other applicable Secretary of Interior’s Standards. FEMA will also consider any views provided by consulting parties, including PEMA, and the public related to such effects.
 - 1. For standing structures only:
 - a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria or that it meets the Standards, FEMA will make a determination of “no adverse effect” pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c) and specified in Section §800.11(e). In the case of FEMA’s disaster *response and recovery program*, unless the SHPO or any consulting party objects within 15 days after receipt of the notification, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA/PEMA’s *mitigation programs*, the SHPO or any consulting party will make any objections known within 30 days;
 - b. If the SHPO objects to the “no adverse effect” determination, FEMA may request, when appropriate, through PEMA that the sub-grantee revise the scope of work to substantially conform to the Standards, in consultation with the SHPO and consulting parties. FEMA also will ensure that the revised scope of work is reviewed for funding eligibility. If the sub-grantee modifies the scope of work to address the objections, FEMA will notify the SHPO and all consulting parties, and provide supporting documentation. In the case of FEMA’s disaster *response*

and recovery programs, unless the SHPO or any consulting party objects within ten (10) days after receipt, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA/PEMA's *mitigation programs*, the SHPO or any consulting party will make any objections known within the standard 30 days as provided for in 36 CFR §800.5(c); and

- c. If the sub-grantee is unable to, or will not modify the Undertaking to meet the Standards or address the objections, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.
2. For archaeological properties and historic properties of traditional religious or cultural significance:
 - a. If FEMA and the SHPO agree that an Undertaking does not meet the adverse effect criteria, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c) and specified in Section §800.11(e). In the case of FEMA's *disaster response and recovery program*, unless the SHPO or any consulting party objects within 10 days after receipt SHPO, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA/PEMA's *mitigation programs*, the SHPO or any consulting party will make any objections known within 30 days;
 - b. If the SHPO objects to the "no adverse effect" determination, but the identified historic properties can be avoided through redesign of an Undertaking, or through procedures/requirements agreed upon among all the consulting parties, FEMA will make a determination of "no adverse effect" pursuant to 36 CFR §800.5(b). FEMA will notify the SHPO and all consulting parties of this determination and provide supporting documentation pursuant to 36 CFR §800.5(c) and specified in Section §800.11(e). In the case of FEMA's *disaster response and recovery program*, unless the SHPO or any consulting party objects within 10 days after receipt, FEMA will complete the Section 106 review and may approve funding. In the case of FEMA/PEMA's *mitigation programs*, the SHPO or any consulting party will make any objections known within 30 days; and
 - c. If the SHPO objects to the "no adverse effect" determination and the project cannot be modified or procedures/requirements cannot be agreed upon to avoid the historic property, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.
- E. For all other historic properties where Secretary of Interior Standards do not exist or where avoidance is not easily achieved, such as properties of religious and cultural importance that meet the NR criteria, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

VII. RESOLUTION OF ADVERSE EFFECTS FOR HISTORIC PROPERTIES

- A. If FEMA determines that an Undertaking will adversely affect a historic property, FEMA will determine if the Undertaking will be reviewed in accordance with 36 CFR §800.6(b), resulting in a Memorandum of Agreement (MOA), or addressed through a Secondary Programmatic Agreement (Secondary Agreement). Following this decision, FEMA will notify the SHPO and other consulting parties, and provide the ACHP with an adverse effect notice, including documentation in accordance with 36 CFR §800.11(e), subject to the confidentiality provisions of Sec. §800.11(c) with respect to properties of religious or cultural significance.
1. Memorandum of Agreement: FEMA may develop an MOA in accordance with 36 CFR §800.6(c) to outline measures to avoid, minimize or treat adverse effects to historic properties. FEMA may also consider reasonable alternate treatment measures that serve an equivalent or greater public benefit than standard measures or archaeological data recovery, while promoting the preservation of historic properties. FEMA will attempt to identify all such feasible measures in consultation with the SHPO and other consulting parties identified in accordance with Section §800.2(c), where appropriate. Alternate measures may include, but are not limited to, preservation planning, interpretive programs, or improvement of existing historic properties databases with Geographic Information Systems.
 2. Secondary Programmatic Agreement: FEMA, the SHPO, PEMA, the ACHP, if participating, and other consulting parties may consult to develop a Secondary Agreement to require programmatic conditions and/or treatment measures for multiple, but similar Undertakings by a sub-grantee. A secondary programmatic agreement may also consider reasonable alternate treatment measures.
- B. When an Undertaking will adversely affect an archaeological property, FEMA may treat the adverse effect by providing for the recovery of significant information through archaeological data recovery or other scientific means. To accomplish this objective, FEMA will follow the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" published in the Federal Register (64 FR 95N 27085-27087, May 18, 1999), the Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission's *Cultural Resource Management in Pennsylvania: Guidelines for Archaeological Investigations* (July 1991), and may consult with the other consulting parties to prepare a data recovery plan. This data recovery plan will include a provision that all materials and records resulting from archaeological survey and data recovery are curated at a repository within the Commonwealth of Pennsylvania and in accordance with 36 CFR Part 79 and relevant Pennsylvania Historic Preservation Office guidelines. For sites where FEMA determines that human remains and possible associated funerary remains or items of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), might be present FEMA shall ensure that any human remains and grave-associated artifacts encountered during the archaeological investigations are brought to the attention of PEMA, the SHPO, and the Tribe, as appropriate. FEMA shall notify the

ACHP within 24 hours of the discovery. At FEMA's discretion, all parties shall meet at the discovery site within 72 hours. No activities that might disturb or damage the remains will be conducted until all parties have determined whether archaeological excavation is necessary and/or desirable. All procedures will follow the guidance outline in the national Park Service publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, and consider the Native American Graves Protection and Repatriation Act of 1990 (PL 101-160) as appropriate, and the Pennsylvania Historical and Museum Commission's *Policy for the Treatment of Burials and Human Remains* (1993).

- C. When an Undertaking will adversely affect a National Historic Landmark (NHL), FEMA will notify and invite the Secretary of Interior (Secretary), through the Northeast Regional Office of the National Park Service in Philadelphia, to participate in consultation, pursuant to 36 CFR §800.10 ("Special requirements for protecting NHLs"). When the ACHP participates in consultation related to an NHL, the ACHP will report the outcome of the consultation to the Secretary and the FEMA Director.

VIII. CHANGES TO AN APPROVED SCOPE OF WORK

PEMA will notify FEMA as soon as practicable of any proposed change to the approved scope of work for an Undertaking related to a historic property. FEMA will then consult with the SHPO and other appropriate parties to determine if the change will have an effect on the property. FEMA may authorize the Sub-grantee to proceed with the change if it meets an Allowance (Appendix A) or if, for a standing structure, the change can be modified to conform to the Standards, or any other applicable Secretary of Interior Standards. If FEMA determines that the change does not meet an Allowance, or if FEMA and the SHPO determine that the change cannot be modified to conform to the Standards, or any other applicable Secretary of Interior Standards, FEMA will initiate adverse effect consultation pursuant to Stipulation VII.

IX. UNEXPECTED DISCOVERIES

- A. PEMA will notify FEMA and the SHPO as soon as practicable if it appears that an Undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. PEMA will require the sub-grantee to stop construction activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property until FEMA concludes consultation with the SHPO.
- B. FEMA will consult with the SHPO to develop actions to take into account the effects of the Undertaking. FEMA will notify the SHPO of any time constraints, and all parties will mutually agree upon timeframes for this consultation. PEMA and the sub-grantee may participate in this consultation. FEMA will provide the SHPO with written recommendations to take into account the effects of the Undertaking. SHPO will respond to FEMA and PEMA concerning the written recommendation within no more than 15 days of their receipt.

- C. If the SHPO does not object to FEMA's recommendations within the agreed upon timeframe, FEMA will require the sub-grantee to modify the scope of work to implement the recommendations. If the SHPO objects to the recommendations, FEMA and the SHPO will consult further to resolve this objection through actions including, but not limited to, identifying project alternatives that may result in the Undertaking having no adverse effect on historic properties, or proceeding in accordance with Stipulation VII.
- D. PEMA will advise sub-grantees of the requirements of this Agreement and Pennsylvania General Statutes regarding the discovery of human remains. If human remains are discovered during the course of project implementation, PEMA will notify the County Coroner, FEMA and the SHPO immediately; and will require the sub-grantee to stop project activities in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm until FEMA concludes consultation with the signatories of this Agreement. Procedures outlined in Stipulation VII B would follow thereafter if human remains are determined to be under PHMC's purview.

X. PUBLIC PARTICIPATION

- A. FEMA recognizes that the views of the public are essential to informed decision making in the Section 106 review process. FEMA will consult with the SHPO to determine if there are individuals or organizations with a demonstrated interest in the preservation of historic resources that should be made aware of an Undertaking. If such parties are identified, FEMA will provide them with information regarding the Undertaking and its effect on historic properties, consistent with the confidentiality provisions of 36 CFR §800.11(c). When FEMA has determined that an Undertaking will have an adverse effect upon historic properties, FEMA will provide the public an opportunity to express their views on resolving the adverse effect.
- A. FEMA will notify the public of proposed actions in a manner that reflects the:
 - 1. Nature and complexity of the Undertaking and FEMA's specific involvement;
 - 2. The effect of the Undertaking on historic properties;
 - 3. Likely interest of the public in the effects on historic properties; and
 - 4. Confidentiality concerns of the consulting parties, private individuals and businesses.
- C. In accordance with the plan developed in consultation with the SHPO for involving the public, and taking into consideration the variables in X.B, FEMA will identify the appropriate stage of project review for seeking public input during the Section 106 process.

These stages may include:

- 1. Initial coordination for complex Undertakings;

2. Identification of historic properties;
 3. Assessment of adverse effects; and
 4. Resolution of adverse effects.
- D. FEMA will consider all views provided by the public regarding an Undertaking, and will consider all written requests of individuals and organizations to participate as consulting parties, and in consultation with the SHPO, PEMA, and ACHP, if participating, determine which should be consulting parties. FEMA will invite any individual or organization that will assume a specific role or responsibility outlined in a MOA or Secondary Agreement to participate as a consulting party.
- E. FEMA also may provide public notices and the opportunity for public comment or participation in an Undertaking through the public participation process of the National Environmental Policy Act (NEPA) and its implementing regulations set out at 44 CFR Part 10, as well as Executive Orders 11988 and 11990 relating to floodplains and wetlands as set out in 44 CFR Part 9.
- F. At any time during the implementation of the measures stipulated in this Agreement should a member of the public raise an objection to any measure within the Agreement or its manner of implementation, FEMA will take the objection into account and consult as needed with the objecting party, the SHPO, PEMA, and the ACHP, if participating, to address the objection.

XI. DISPUTE RESOLUTION

Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, FEMA will consult with the objecting party(ies) to resolve the objection and notify all other parties that the disagreement has occurred. If FEMA determines that such objection(s) cannot be resolved, FEMA will:

- A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP will review and advise FEMA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the PA, will be taken into account by FEMA in reaching a final decision regarding the dispute;
- B. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FEMA may render a decision regarding the dispute. In reaching its decision, FEMA will take into account all comments regarding the dispute from the parties to the PA; and
- C. FEMA's responsibility to carry out all other actions subject to the terms of this PA that are not the subjects of the dispute remain unchanged. FEMA will notify all parties of its

decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FEMA's decision will be final.

XII. ANTICIPATORY ACTIONS

- A. FEMA will not grant assistance to any potential sub-grantee who, with intent to avoid the requirements of this Agreement or Section 106, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. Under extraordinary circumstances, and after consulting with the SHPO, FEMA may determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the sub-grantee, and will complete consultation for the Undertaking pursuant to Stipulation VII.
- B. FEMA will specifically advise PEMA of this Anticipatory Actions Stipulation and will encourage PEMA to advise its sub-grantees in writing at their applicant's briefings that they may not initiate construction on projects for which they are seeking Federal funding prior to compliance with this Agreement. PEMA will also advise its Sub-grantees that they may jeopardize Federal funding if construction is initiated prior to compliance with this Agreement.

XIII. DURATION, AMENDMENTS, AND TERMINATION

- A. This Agreement will remain in effect from the date of execution for a period not to exceed five (5) years or until FEMA, in consultation with all other signatories, determines that the terms of this Agreement should be terminated pursuant to either Stipulation XIII.C or Stipulation XIII.D below. Upon such determination, FEMA will provide all other signatories with written notice of the determination and termination.
- B. If any signatory to the Agreement determines that the Agreement cannot be fulfilled, or that an amendment to the terms of this Agreement must be made, the signatories will consult to seek amendment of the Agreement. The process of amending this Agreement will be the same as that exercised in creating the originating Agreement.
- C. FEMA, SHPO or PEMA may terminate this Agreement by providing 30 days' written notice to the other parties, provided that the parties will consult during this period to seek amendments or other actions that would prevent termination. Termination of this Agreement will require compliance with 36 CFR Part 800.
- D. This Agreement may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this Agreement, or by FEMA's implementation of Alternate Procedures, pursuant to 36 CFR §800.14(a), or by supplanting regulations.

XIV. IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT

- A. This Agreement may be implemented in counterparts, with a separate page for each signatory, and FEMA will ensure that each party is provided with a complete copy. This Agreement will become effective on the date that FEMA, SHPO and PEMA attach their signatures.

- B. Execution of this Agreement by FEMA, PEMA and SHPO, and implementation of its terms evidence that FEMA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

FEDERAL EMERGENCY MANAGEMENT AGENCY

By: Patricia G. Arcuri
Patricia G. Arcuri,
Acting Regional Director, Region III

Date: 12/3/04

By: Science Kilner
Science Kilner,
Regional Environmental Officer, Region III

Date: 12/1/04

**PENNSYLVANIA HISTORIC PRESERVATION OFFICE,
PENNSYLVANIA HISTORICAL AND MUSUEM COMMISSION**

By: Jean H. Cutler
Jean Cutler,
State Historic Preservation Officer

Date: 12-16-04

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

By: David M. Sanko
David M. Sanko,
Director

Date: 12-23-04

APPENDIX A: Programmatic Allowances

This list of Allowances enumerates program activities that will have limited or no effect on historic properties. Projects falling under one or more of these allowances will be reviewed by qualified FEMA staff, but do not require case-by-case review by the SHPO pursuant to Stipulations II-VI. However, SHPO may be consulted in cases where the applicability is uncertain to the reviewer. This list may be revised without amending this Agreement, with a letter concurred by FEMA and the SHPO.

Program activities that affect historic properties will be designed to consider ways to repair rather than replace damaged historic features whenever feasible unless the severity of deterioration or destruction requires replacement of a distinctive feature. When referenced in an Allowance, “in kind”, when historic properties are present, shall mean that it is the same material and the result will match all physical and visual aspects, including form, color, and workmanship. “In kind” mortar will also match the strength, content, color and joint tooling of historic mortar.

- I. **GROUND DISTURBING ACTIVITIES AND SITE-WORK**, provided the excavation will not disturb known archaeological sites or features or notably disturb more soil than previously disturbed by the original construction or installation. For projects where the extent of past disturbance or the APE required for construction are unclear, a site inspection will be conducted by FEMA.
 - A. Ground disturbing activities related to the repair, replacement, or hardening of any footings, foundations, retaining walls, other slope stabilization systems (i.e., gabion baskets, lag and pile walls, etc.), and utilities (including sewer, water, storm drains, electrical, gas, communication, leach lines, and septic tanks), *provided the excavation will not disturb more soil than previously disturbed*. This Allowance refers to archaeological review. The Allowance also applies to historic review of such features that are listed in or eligible for the Register, only if the work is in kind.
 - B. Repairs to slope failures that do not require notable grading of undisturbed soils where staging areas are in improved existing rights of way.
 - C. Repair, replacement, or upgrade of culvert systems within rivers, streams, or drainage ways, including any modest increase in capacity, *provided that they substantially conform to the preexisting function, footprint, depth or profile, and/or that related excavation will not disturb any previously undisturbed area*. Unless repairs are in kind, this allowance excludes such facilities that have achieved historic significance such as dams, *stone or masonry culverts and arches, wingwalls, and headwalls beneath roadways that are more than 50 years old and are of distinctive design or materials*. For large culverts, this Allowance precludes the use of a temporary bridge or culvert, or related approach work.

- D. Repair, replacement, or hardening of utilities under existing improved roads/roadways, or within other previously disturbed rights of way.
 - E. In kind repair or replacement of driveways, parking lots, and walkways.
 - F. In kind repair or replacement of fencing and other freestanding exterior walls, although consideration should be first given to identifying ways to repair rather than replace damaged historic fences whenever feasible.
 - G. Substantially in kind repair or replacement of metal utilitarian structures (i.e. pump houses, etc.), including major exposed pipelines, except for those structures that have achieved historical significance. Modern materials may be used, provided their finish is compatible with the context of the site. *Structures such as bridges, water towers, and antenna towers are not considered metal utilitarian structures for the purposes of this Allowance.*
 - H. Installation of temporary structures for uses such as classrooms or offices. This Allowance does not apply to such structures in historic districts or in archaeologically sensitive areas as determined through consultation between FEMA and SHPO.
 - I. Installation of scaffolding, temporary barriers (i.e., chain link fences, etc.), polyethylene sheeting, or tarps, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations.
 - J. In kind repair or replacement of hardscaping and utilities, such as paving, planters, trellises, irrigation, and lighting.
 - K. In kind repair or minimal upgrade to codes and standards of existing piers, docks, boardwalks, boat ramps, and dune crossovers, provided the footprint will substantially match the existing footprint.
 - L. Debris collection from public rights of way, transport, and disposal in existing licensed solid waste facilities. This Allowance does not include establishment or expansion of previously unpermitted debris staging or disposal areas. However, it does apply to the use of temporary storage areas located in existing hard-topped areas with controlled drainage (such as parking lots), provided other issues do not exist.
 - M. Sediment removal from man-made drainage facilities, including retention/detention basins, ponds, ditches, and drainage canals, to restore the facility to its pre-disaster condition, provided the sediment is used to repair eroded banks or is disposed at an existing licensed or permitted spoil site. This excludes these activities in any historic canals or canal structures.
 - N. Dewatering flooded developed areas of an acre or less by pumping.
- II. **HISTORIC BURIAL PLACES**, as defined by the Pennsylvania Historic Burial Places Preservation Act of 1994, P.L. 141, No. 22, are tracts of land which have been used as burial

grounds for more than 100 years but where no burials have occurred for at least 50 years and no future burials will occur or are burial areas listed in or eligible for listing in the National Register of Historic Places (NRHP). FEMA applicants are responsible for compliance with the aforementioned Act and the Pennsylvania Consolidated Statute on Burial Grounds (Title 9). Furthermore, FEMA applicants or their agents are responsible for stabilization and reinternment of disaster disrupted human remains and/or caskets according to state codes and standards.

- A. The circumstances surrounding uprooted trees in sensitive cemetery areas will be jointly assessed by the responsible grant applicant and FEMA historic preservation staff. Where feasible, it shall be recommended that the rootballs of the uprooted trees be placed back into the original depressions. If such actions promote further ground disturbance, it will be recommended that trees be removed by hand with special precautionary measures taken to ensure that heavy equipment and staging areas do not disturb sensitive or at risk landscapes.
- B. In kind repair of historic gravestones, monuments, fences, and other historic cemetery components. Where appropriate, applicants will be required to consult and retain experienced conservators capable of producing work compatible with historic craftsmanship and meeting the SOI Standards.

III. **WOODY DEBRIS REMOVAL** from historic properties either listed or eligible for listing on the National Register of Historic Places (other than cemeteries) shall be allowed with no further Bureau review when work is consistent with the following:

- A. Debris removal on sensitive or at-risk landscapes shall be done by hand, with trees being cut into smaller segments and carried away.
- B. No heavy machinery will be allowed on sensitive or at-risk landscapes.
- C. Debris containment vehicles and staging areas shall only be located on service roads, parking lots, or non-sensitive landscapes.
- D. Where feasible and prudent, rootballs should be cut off at the base and their roots trimmed so that they may be placed back in their depressions to avoid further ground disturbance.
- E. Rootball voids shall be filled with clean fill.
- F. In the event that archaeological levels or features are discovered during the implementation of the project, the project shall be halted until such time as FEMA, in consultation with the State Historic Preservation Officer (SHPO), determines that appropriate measures are taken to ensure that the project is in compliance with the National Historic Preservation Act.

IV. **BUILDINGS** that are more than 50 years old (or less than 50 years old if of exceptional significance) and are listed on or potentially eligible for listing on the National Register of Historic Places, when all work is consistent with the Secretary of Interior Standards for the

Treatment of Historic Properties (36 CFR Part 800) and when consideration has been given to identifying ways to repair rather than replace damaged historic features whenever feasible unless the severity of deterioration or destruction requires replacement of a distinctive feature.

A. Interior Floors, Walls, Stairs and Ceilings

1. In kind repairing, replacing, retaining, preserving, protecting, or maintaining of materials or features.
2. In kind repair of interior floors, walls and ceilings. This Allowance also applies to the repair of interior finishes, including plaster and wallboard, provided the repair is restricted to the damaged area and does not affect adjacent materials. The Allowance does not apply to historic architectural finishes such as decorative plaster trim, or plaster substrates for decorative materials such as murals, gold leaf, etc.
3. Repair or replacement of suspended or glued ceiling tiles.
4. Installation of grab bars and other such minor interior modifications for handicapped accessibility, when significant interior features (such as trim or architectural details) are not altered.
5. Non-destructive or concealed testing for hazardous materials (lead paint, asbestos, etc.) or damage assessment.

B. Utilities and Mechanicals

1. Minor interior mechanical (HVAC), electrical, or plumbing work, limited to upgrading, elevation, or in kind replacement, with the exception of historic fixtures, which must be repaired in kind for this Allowance to apply. This Allowance does not apply to exposed new ductwork.
2. Replacement of interior fire detection, fire suppression, or security alarm systems. This Allowance does not apply to exposed wiring such as surface mounted wiring, conduits, piping, or to the installation of new systems where they will affect significant interior features.

C. Windows and Doors

1. In kind repair or replacement of windows and doors damaged by the disaster, where profiles, elevations, details and materials match those of the original windows and doors.
2. Replacement of windowpanes in kind, provided the result does not alter the existing window material and form. Also, historic windows or glazing may be treated with clear window films. This Allowance does not apply to the replacement of existing archaic, architectural or decorative glass.

3. In kind repair of historic door and window hardware, when possible.

D. Exterior Walls, Cornices, Porches and Foundations

1. Repainting of surfaces, provided that destructive surface preparation treatments are not used, such as water blasting, sandblasting, power sanding, and chemical cleaning; surface treatments must comply with the treatment approaches outlined in *Preservation Brief #6: Dangers of Abrasive Cleaning to Historic Buildings* (National Park Service: 1979).
2. In kind repair or partial replacement of porches, cornices, exterior siding, doors, balustrades, stairs, or trim, as long as the replacement pieces match the original in detail and material.
3. Substantial in kind repair or in kind replacement of signs or awnings.
4. Temporary stabilization bracing or shoring, provided such work does not result in additional damage, significant loss of historic fabric, or irreversible alterations, and does not affect known archaeological sites or features.
5. Anchoring of walls to floor systems, provided the anchors are embedded and concealed from exterior view and disturbed historic fabric is restored in kind.
6. In kind repair or reconstruction of concrete/masonry walls, parapets, chimneys, or cornices, including comparable brick, and mortar that matches the color, strength, content, rake, and joint width, where occurring.
7. Bracing and reinforcing of chimneys and fireplaces, provided the bracing and reinforcing are either concealed from exterior view or removable in the future.
8. Strengthening of foundations and the addition of foundation bolts, provided that visible new work is in kind, including mortar that matches the color, content, strength and rake, where occurring.

E. Roofing

1. In kind repair, replacement, or strengthening of roofing, gutters, or downspouts. Consideration should be first given to identifying ways to repair rather than replace damaged historic fences whenever feasible. Also, cement asbestos shingles may be replaced with asphalt-based shingles, and untreated wood shingles may be replaced with fire resistant wood shingles.

F. Weatherproofing and Insulation

1. Caulking and weather-stripping to complement the color of adjacent surfaces.

2. In kind replacement of insulation systems, provided that interior plaster, woodwork, or exterior siding is not altered. This Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. Also, the Allowance does not apply to insulation systems that do not include an adequate vapor retarder, or to work in enclosed spaces that are not vented.

V. ROADS AND ROADWAYS, provided that excavation or site work will not notably disturb more soil than previously disturbed by the original construction.

- A. Repair of roads to pre-disaster geometric design standards and conditions using in kind materials, number and width of lanes, shoulders, medians, curvature, grades, clearances, and side slopes, provided that all work is conducted from within the existing roadway.
- B. Repair of road composition with in kind surface materials to maintain pre-disaster size, traffic capacity, and load classifications of motor vehicles, including the reshaping and compacting of road bed soil and the repair of asphaltic or Portland cement concrete pavements. *This Allowance does not apply to the repair of brick or stone paving.*
- C. Repair, replacement, upgrade or installation of culverts beneath roads or within drainage ditches, including any modest increase in capacity for mitigation purposes or to meet current codes and standards, *provided that they substantially conform to the preexisting function, footprint, depth or profile, and/or that related excavation will not disturb any previously undisturbed area.*
- D. Repair of traffic control devices such as traffic signs and signals, delineators, pavement markings, and traffic surveillance systems.
- E. In kind repair of road lighting systems, such as period lighting.
- F. In kind repair of road appurtenances such as curbs, berms, fences, and sidewalks that are not brick or stone.
- G. In kind repair of roadway safety elements such as barriers, guardrails, and impact-attenuation devices. In the case of guardrails, the addition of safety end treatments is allowed.
- H. Reestablishment and/or upgrading of existing ditches to original width.

VI. BRIDGES

- A. In-kind repairs of abutments, including filling scoured areas, where no excavation or new construction is proposed.

- B. Repair or replacement of non-historic bridges, where repair work, including staging areas do not exceed the existing road right of way.
- C. In-kind repairs of historic bridges, including those under 20 feet in length (Penn Department of Transportation would define these as culverts), where character-defining features or elements of the structure are not altered or changed.

VII. UTILITIES

- A. In residential or urban settings, replacement or relocation of existing utility poles between the edge of a sidewalk and road.
- B. In rural settings, replacement of poles located along road shoulders.

VIII. AIRPORTS, provided that excavation or site work will not disturb more soil than previously disturbed by the original construction.

- B. Repair of existing runways.
- C. In-kind repair of safety components, including beacons, on airport property, as long as no new access is required.
- D. In-kind replacement or repair of existing beacons not on airport property, as long as no new access is required.

IX. RAILROADS, provided that excavation or site work will not disturb more soil than previously disturbed by the original construction.

- A. In-kind repair or replacement of railroad safety components.
- B. Repair of railroad crossings, within the area of prior disturbance.
- C. In-kind replacement of existing bolt-connected railroad tracks and wood ties.

X. ACQUISITIONS AND ELEVATIONS

- A. Funding the administrative action of acquiring properties in buyout projects, including the real estate transaction and excluding demolition, *provided that the SHPO was notified of the pending action and their comments were solicited by PEMA during the selection process.*
- B. Acquisition and demolition, or elevation of structures that are less than 50 years old, are not located in National Register listed or eligible historic districts and that have not achieved exceptional historical significance independent of their age, and where demolition or elevation activities will be limited to immediately adjacent to the structure's foundation.

XI. FEES AND SERVICES

- A. Miscellaneous labor costs.
- B. Rental or purchase of vehicles or other motorized equipment.
- C. Builders fees.
- D. Fees for architectural, engineering or other design services, provided the services will not result in an adverse effect on a property listed in or eligible for the Register.
- E. Reimbursement of a sub-grantee's insurance deductible, not to exceed \$1,000.

XI. VECTOR CONTROL

- A. Application of pesticides to reduce adverse public health effects, including aerial and truck mounted spraying.

APPENDIX 11

Work Breakdown Structure (WBS) Codes

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2.2.28	Proposed
Description	Early Coordination
Objective	The objective of this task is to initiate the Section 106 consultation on cultural resources early in project development process, at the direction of the PennDOT District Cultural Resource Professional(s), including developing the area of potential effects and contacting potential consulting parties and involving the public in the Section 106 process.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter III and VI <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Scoping 2. Area of Potential Effects 3. Public Involvement and Consulting Party Coordination <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtasks
Detail	

2.2.28.5	Proposed
Description	Scoping
Objective	<p>The objective of this task is to perform necessary tasks to prepare for the project scoping field view (SFV) for cultural resources, including identifying previously known or potentially eligible historic properties within the project's area of potential effect (APE), attend the scoping field view with the PennDOT District Cultural Resource Professional(s), and determine which cultural resource tasks will be necessary for the project.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.3 and 800.4 - Programmatic Agreement for among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter III <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), perform necessary tasks to prepare for the project scoping field view (SFV) for cultural resources, including identifying previously known or potentially eligible historic properties within the project's area of potential effect (APE), attend the scoping field view with the PennDOT District Cultural Resource Professional(s), and determine which cultural resource tasks will be necessary for the project.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Prior to the SFV, obtain and review a project description, a map locating the project, and any plans that may be available from the PennDOT District Cultural Resource Professional(s). 3. Visit the project location and note any potential issues. 4. Identify known and mapped archaeological and historic properties within and adjacent to the project area, using the Pennsylvania Historical and Museum Commission's (PHMC) Cultural Resources Geographic Information System (CRGIS). Search the PHMC's online list of properties on the National Register of Historic Places and search the CRGIS for unmapped historic properties within the project region's municipalities. It may be necessary to conduct further research to gather information (including the review of photographs) in order to identify the location of these resources within the study region. 5. Obtain and examine historic maps, soil maps, and other pertinent information such as historical aerial photographs. 6. Prior to the SFV, provide the PennDOT District Cultural Resource Professional(s) with a map of the project study region on a 7.5 minute USGS topographic base, depicting the project area and locating and labeling all identified archaeological and historic properties; and a tabular synopsis of information about each mapped resource. 7. Attend the SFV or cultural resource SFV with the PennDOT District Cultural Resource Professional(s). 8. If requested by the PennDOT District Cultural Resource Professional(s), prepare and distribute meeting minutes of the field view. <p>Scope Deliverables:</p>

2.2.28.5	Proposed
2.2.28.5	<ol style="list-style-type: none"> 1. Provide electronic and paper for use during the field view: A map of the project study region on a 7.5 minute USGS topographic base, depicting the project area and locating and labeling all identified archaeological and historic properties; and a tabular synopsis of information about each mapped resource. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of conferences calls, meetings, or field views held to discuss the surveys or their results.
Detail	

2.2.28.6	Proposed
Description	Area of Potential Effects (APE)
Objective	The objective of this task is to define and document the project's area of potential effects (APE).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.16 and 800.4 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter III -Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals <p>Scope: At the direction of the PennDOT District Cultural Resource Professional(s), define and document the project's area of potential effects (APE).</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Perform a field view of the proposed project, either with the PennDOT District Cultural Resource Professional(s) or independently. 3. Establish the project's APE, which is equivalent to the APE for above ground historic properties. 4. Prepare a written description and justification and a map on a USGS 7.5 minute topographic base and other appropriate mapping of the APE for above ground historic properties. 5. Establish the APE for archaeological resources, defined as all areas in which ground disturbing activities may occur. 6. Prepare a written description and justification and a map on a USGS 7.5 minute topographic base and other appropriate mapping of the APE for archaeological resources. 7. If requested by PennDOT District Cultural Resource Professional(s), attend a meeting with the State Historic Preservation Office (SHPO) to consult on the APE and prepare minutes of the meeting. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the APE for above ground historic properties. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the APE for archaeological resources. 3. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the minutes with the SHPO.
Detail	

2.2.28.8	Proposed
Description	Public Involvement and Consulting Parties
Objective	The objective of this task is to contact potential consulting parties and involve the public in the Section 106 process.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.3 - Programmatic Agreement for among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III, VI, and VII - Project PATH server templates/forms <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), contact potential consulting parties and involve the public in the Section 106 process.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Contact property owners, local collectors, and other individuals or groups who are not contacted by Preservation Pennsylvania, as appropriate, who may have knowledge of archaeological sites or above ground historic properties within the area of potential effects (APE). <ol style="list-style-type: none"> a) Prepare and mail document for contacting consulting parties, using template on Project Path server; include consulting party application form on Project Path server. b) In consultation with District’s Cultural Resource Professional(s), contact potential consulting parties by mail, telephone or email and/or meet with them; document every telephone call and meeting with a memo summarizing discussion. 3. Participate in project public meeting(s) or schedule and hold a cultural resources specific public meeting(s): <ol style="list-style-type: none"> a) Prepare meeting announcements and/or flyers. b) Prepare visual materials, including posterboards and handouts. c) Attend meeting and address comments. d) Inform the public about known information about cultural resources within the APE. e) Solicit information from the public on cultural resources within the APE. f) Prepare minutes of the meeting. g) Provide consulting party application form to appropriate individuals/groups. 4. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s). <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide and mail paper copies of document for contacting consulting parties, including consulting party application form.

2.2.28.8	Proposed
	<p>2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all correspondence (letters, forms, and emails) to and from potential and active consulting parties and memos summarizing each individual telephone conversation and meeting.</p> <p>3. Provide, display, and/or distribute electronic paper copies of public meeting materials, including announcements, flyers, posterboards, and handouts.</p> <p>4. Provide minutes of public meetings.</p> <p>5. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).</p>
Detail	

2.2.29	Proposed
Description	Archaeology
Objective	The objective of this task is to identify and evaluate archaeological resources within the area of potential effects (APE); if any eligible resources are identified, to assess the effect of the project on the resources.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.4 - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter VII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Archaeological Predictive Models 2. Geomorphology 3. Archaeological Identification and Evaluation (Phase I & II) – Recommendations of Eligibility 4. Public Involvement <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtasks
Detail	

2.2.29.3	Proposed
Description	Archaeological Predictive Models
Objective	The objective of this task is to develop an archaeological predictive model that provides information on the probability that pre-contact and historic archaeological sites are present within the area of potential effects (APE) and where within the APE they are likely to be located.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.4 - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VII, XII, and XIV <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), develop an archaeological predictive model that provides information on the probability that pre-contact and historic archaeological sites are present within the APE and where within the APE they are likely to be located.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Develop an archaeological predictive model that provides information on the probability that pre-contact and historic archaeological sites are present within the APE and where within the APE they are likely to be located. 3. Prepare an Archaeological Predictive Model report, following the guidelines in Publication 689, Chapter XII. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Archaeological Predictive Model report.
Detail	

2.2.29.4	Proposed
Description	Geomorphology
Objective	<p>The objective of this task is to conduct a geomorphological evaluation in alluvial or colluvial settings within the area of potential effects (APE). The results of the geomorphological evaluation may be used to document prior disturbance, assess the potential for deeply buried cultural resources, record archaeological site stratigraphy, and document depositional processes.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.4 - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), conduct a geomorphological investigation of alluvial and colluvial settings within the APE to document prior disturbance, assess the potential for deeply buried cultural resources, record archaeological site stratigraphy, and document depositional processes. Initial geomorphological investigations should be done prior to Phase I archaeological testing and should be used to develop the archaeological deep testing strategy.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Using auger borings, backhoe trenches, or other means to examine soil profiles, determine the landform(s) on which the project is located, determine the soil type(s), stratigraphy, and age of the depositional events and soils. 3. Determine the potential for intact archaeological deposits. 4. Prepare a Geomorphological Evaluation report, following the guidelines in Publication 689, Chapter XII as either a stand-alone document or an appendix in an archaeology report, Phase I Archaeology Negative Survey Form, or Record of Disturbance Form. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Geomorphological Evaluation report.

2.2.29.5	Proposed
Description	Archaeological Identification and Evaluation (Phase I & II) – Recommendations of Eligibility
Objective	The objective of this task is to identify archaeological sites within the area of potential effects (APE), and if sites are identified, to evaluate their eligibility for listing in the National Register of Historic Places. An additional objective is to assess the effect of the project on any archaeological sites within the APE which are eligible for listing in the National Register of Historic Places.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.4 and 800.5 - National Register Bulletin Guidelines for Evaluating and Registering Archeological Properties - Advisory Council’s Handbook on the Treatment of Archaeological Properties - National Park Service’s “The Archaeological Survey: Methods and Uses” - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR 61.3 (b) and Chapter 6, Section C.1.a) - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> - Pennsylvania Historical and Museum Commission, The State Museum of Pennsylvania, Archaeology Curation Guidelines - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter VII, XII, VIII, and XIV <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), identify archaeological resources within the APE (Phase I archaeological identification survey) and/or evaluate identified archaeological resources for eligibility in the National Register of Historic Places (Phase II archaeological evaluation investigations). Assess the effect of the project on any archaeological sites within the APE which are eligible for listing in the National Register of Historic Places.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Perform Archaeological Identification Survey (Phase I) <ol style="list-style-type: none"> a) Coordinate with the PennDOT District Cultural Resource Professional(s) to confirm the archaeological APE for the project and the level of testing needed to identify archaeological resources located within the APE. The PennDOT District Cultural Resource Professional(s) will provide specific direction on what types of testing will occur in which locations within the APE. b) Conduct appropriate background research, field testing, and laboratory analysis according to Pennsylvania Historical and Museum Commission’s “Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>” and Publication 689, Chapter VII. c) If the entire archaeological APE can be documented as having been previously disturbed, prepare a Record of

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	<p>Disturbance Form, following the guidelines in the Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" and Publication 689, Chapter VII.</p> <p>d) If the entire archaeological APE cannot be documented as having been previously disturbed, field testing is conducted, and no archaeological sites are identified, prepare a Phase I Archaeology Negative Survey Form, following the guidelines in the Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" and Publication 689, Chapter VII.</p> <p>e) If archaeological resources are identified, consult with the PennDOT District Cultural Resource Professional(s) to determine how to proceed. If requested by the PennDOT District Cultural Resource Professional(s), prepare a brief management summary summarizing the results of the survey, the identified site(s), and recommendations concerning whether the site(s) is potentially eligible.</p> <p>f) At the request of the PennDOT District Cultural Resource Professional(s), participate in conference calls, meetings, or field views to discuss the results of the survey and how to proceed. The conference calls, meetings, or field views may be with PennDOT, the State Historic Preservation Office, the Federal Highway Administration, and/or other consulting parties. Prepare the distribute minutes from the conference calls, meetings, or field views.</p> <p>g) If the PennDOT District Cultural Resource Professional(s) determines that the identified site(s) is not eligible for listing in the National Register of Historic Places, prepare an Archaeological Identification (Phase I) full report, following the guidelines in the Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" and Publication 689, Chapter VII.</p> <p>h) If the PennDOT District Cultural Resource Professional(s) determines that any of the identified sites are potentially eligible for listing in the National Register of Historic Places, develop an archaeological evaluation investigations strategy.</p> <p>3. Perform Archaeological Evaluation Investigations (Phase II).</p> <p>a) Conduct appropriate background research, field testing, and laboratory analysis according to Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" and Publication 689, Chapter VII.</p> <p>b) Analyze the collected data are develop recommendations about whether the archaeological site(s) is eligible for listing in the National Register of Historic Places.</p> <p>c) At the request of the PennDOT District Cultural Resource Professional(s), participate in conference calls, meetings, or field views to discuss the results of the survey and how to proceed. The conference calls, meetings, or field views may be with PennDOT, the State Historic Preservation Office, the Federal Highway Administration, and/or other consulting parties. Prepare the distribute minutes from the conference calls, meetings, or field views.</p> <p>d) If the site(s) is recommended as eligible for listing in the National Register of Historic Places, assess the effect of the project on the eligible site(s), following the guidance in Publication 689, Chapter VIII.</p> <p>e) Prepare an Archaeological Identification and Evaluation (Phase I and II) report, following the guidelines in the Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" and Publication 689, Chapter VII.</p> <p>4. When archaeological sites are identified within the APE, prepare artifacts for curation following the guidelines in Publication 689, Chapter XIV.</p> <p>a) If the artifacts were recovered from private property, request that the property owner sign the Pennsylvania Historical and Museum Commission's Accessions Form and Gift Agreement donating the artifacts to the State</p>

2.2.29.5	Proposed
	<p>Museum. If the property owner does not wish to sign the gift agreement, the artifacts must be returned to the owner, following the procedures provided in Publication 689, Chapter XIV.</p> <p>b) If the artifacts were recovered from state property or the property owner chooses to donate the artifacts, process the artifacts and associated documentation in accordance with the Pennsylvania Historical and Museum Commission, The State Museum of Pennsylvania, Archaeology Curation Guidelines and transmit them to the PHMC.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of summary of results of Archaeological Identification survey when archaeological site(s) are identified. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of conferences calls, meetings, or field views held to discuss the surveys or their results. 3. Provide electronic copy in native and pdf formats and at least one paper copy on acid-free paper, of the Record of Disturbance Form, Phase I Archaeology Record of Disturbance Form, Archaeological Identification (Phase I) full report, or an Archaeological Identification and Evaluation (Phase I and II) report. The PennDOT District Cultural Resource Professional(s) may request additional paper copies. 4. Transmit the archaeological artifact collections which were recovered from state property or for which the property owners are donating the collections to the PHMC. Ensure that the collection has been processed in accordance with the PHMC's Curation Guidelines and include the signed Accessions Form and Gift Agreement and a paper copy of the Archaeological Identification (Phase I) full report, or an Archaeological Identification and Evaluation (Phase I and II) report on acid-free paper.
Detail	

2.2.29.6	Proposed
Description	Public Involvement
Objective	<p>The objective of this task is to assist the PennDOT District Cultural Resource Professional(s) with continuing consultation with consulting parties established during early coordination, continue coordination with the public, seek out additional consulting parties, and to provide the PennDOT District Cultural Resource Professional(s) with information to provide to Federally Recognized Tribes/Nations concerning archaeological resources within the project's area of potential effects (APE).</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.3 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VI, VII, and VIII <p>Scope:</p> <p>Assist the PennDOT District Cultural Resource Professional(s) with continuing consultation with consulting parties established during early coordination, continue coordination with the public, seek out additional consulting parties, and to provide the PennDOT District Cultural Resource Professional(s) with information to provide to Federally Recognized Tribes/Nations.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. At the direction of the PennDOT District Cultural Resource Professional(s), prepare materials such as project descriptions, maps, reports, or short summaries of archaeological investigations for submission to Federally Recognized Tribes/Nations. 3. At the direction of the PennDOT District Cultural Resource Professional(s), participate in project public meeting(s) or schedule and hold a cultural resources specific public meeting(s): <ol style="list-style-type: none"> a) Prepare meeting announcements and/or flyers. b) Prepare visual materials, including posterboards and handouts. c) Attend meeting and address comments. d) Inform the public about known information about cultural resources within the APE. e) Solicit information from the public on cultural resources within the APE. f) Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of the meeting. g) Provide consulting party application form to appropriate individuals/groups. 4. Prepare documentation for distribution to consulting parties, including Archaeological Predictive Model reports and archaeological investigations reports, as appropriate. Archaeological technical reports should be made available to the public, however the locations of archaeological sites may not be released to the public. Specific information that could disclose the location of a site deleted or blocked out. 5. Identify additional potential consulting parties, if appropriate.

2.2.29.6	Proposed
	<p>a) Prepare and mail document for contacting consulting parties, using template on Project Path server; include consulting party application form on Project Path server.</p> <p>b) In consultation with District’s Cultural Resource Professional(s), contact potential consulting parties by telephone or email and/or meet with them; document every telephone call and meeting with a memo summarizing discussion.</p> <p>6. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide materials such as project descriptions, maps, reports, or short summaries of archaeological investigations for submission to Federally Recognized Tribes/Nations. 2. Provide and mail paper copies of document for contacting consulting parties, including consulting party application form. 3. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all correspondence (letters, forms, and emails) to and from potential and active consulting parties and memos summarizing each individual telephone conversation and meeting. 4. Provide, display, and/or distribute electronic paper copies of public meeting materials, including announcements, flyers, posterboards, and handouts. 5. Provide minutes of public meetings. 6. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).
Detail	

2.2.30	Proposed
Description	Above Ground Historic Properties: Historic Structures, Buildings, and Districts, and National Historic Landmarks
Objective	Identify above ground historic properties, including historic structures, buildings, and districts, and National Historic Landmarks within the project’s area of potential effect (APE) and assess the effect of the project on eligible above-ground historic properties.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.4 and 800.10 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VII and VIII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Background Research 2. Reconnaissance Surveys 3. Historic Contexts 4. Above Ground Historic Properties Identification and Evaluation – Recommendations of Eligibility 5. Determination of Effects 6. Public Involvement 7. Coordination with archaeologists conducting tasks under 2.2.29 <p>Scope Deliverables:</p> <p>See individual subtasks.</p>
Detail	

2.2.30.3	Proposed
Description	Background Research
Objective	<p>The objective of this task is to conduct background research to determine the level of information already available for properties within the area of potential effects (APE) and to form the basis for historic context development and eligibility evaluations for listing in the National Register of Historic Places.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36CFR Part 800.4 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter VII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), conduct background research to determine the level of information already available for properties within the area of potential effects (APE) and to form the basis for historic context development and eligibility evaluations for listing in the National Register of Historic Places.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Conduct overview background research, following the guidance in Publication 689, Chapter VII. <ol style="list-style-type: none"> a) Identify known and mapped archaeological and above ground historic properties within and adjacent to the project area, using the Pennsylvania Historical and Museum Commission's (PHMC) Cultural Resources Geographic Information System (CRGIS). Search the PHMC's online list of properties on the National Register of Historic Places and search the CRGIS for unmapped historic properties within the project region's municipalities. It may be necessary to conduct further research to gather information (including the review of photographs) in order to identify the location of these resources within the study region. b) Obtain and examine electronically available historic maps, soil maps, and other pertinent information such as historical aerial photographs. 3. Conduct detailed background research to identify inventoried above ground historic properties in or adjacent to the APE, and to assess the level of cultural resources work previously done in the general area, following the guidance in Publication 689, Chapter VII. Detailed background research will typically be conducted with the results provided as part of an Eligibility report. It may also be requested separately by the PennDOT District Cultural Resource Professional(s), who will determine in what format the research should be documented. <ol style="list-style-type: none"> a) Examine the PHMC's CRGIS as well as the files maintained at their facility to obtain Pennsylvania Historic Resource Survey Forms, National Register of Historic Places files, area cultural resource management reports (ER files), and other appropriate documents. b) Conduct research at appropriate regional and local historical societies, libraries, and other research facilities to review relevant primary and secondary source material, including, but not limited to, archival collections, historic maps, atlases, and local histories.

2.2.30.3	Proposed
	<p>c) Conduct informant interviews with property owners and other informants for large projects, projects with numerous cultural resources, and/or when likely to produce meaningful data not available elsewhere.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the results of the overview background research, including copies of relevant historic maps and previously identified resource forms. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the results of the detailed background research, including copies of relevant historic maps and previously identified resource forms.
Detail	

2.2.30.4	Proposed
Description	Historic Contexts
Objective	The objective of this task is to develop historic contexts to provide a basis for National Register eligibility evaluations for resources in the project's area of potential effects (APE).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.4 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VII and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), conduct background research, establish the important themes that influenced the region's pattern of development, and develop narratives on each of the significant themes.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Conduct background research and/or a Reconnaissance Survey, following the guidance in Publication 689, Chapter VII. 3. Establish the important themes that influenced the region's pattern of development, and develop narratives on each of the significant themes. 4. Prepare a Historic Context report, following the guidance in Publication 689, Chapter XII. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Historic Context report.
Detail	

2.2.30.5	Proposed
Description	Above Ground Historic Properties Identification and Evaluation– Recommendations of Eligibility
Objective	The objective of this task is to identify above ground historic properties, including historic structures, buildings, districts, and National Historic Landmarks within the project’s area of potential effects (APE).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.4 and 800.10 - National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VII and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), identify above ground historic properties, including historic structures, buildings, districts, and National Historic Landmarks within the APE.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Conduct appropriate background research and field investigations according to Publication 689, Chapter VII. 3. Complete a Pennsylvania Historic Resource Survey (PHRS) short form or full form for each property specified by the PennDOT District Cultural Resource Professional(s), following the guidance in Publication 689, Chapter XII. The CRP may request that some properties be documented on short forms and some may be documented on full forms. 4. At the request of the PennDOT District Cultural Resource Professional(s), participate in conference calls, meetings, or field views to discuss the results of the survey and how to proceed. The conference calls, meetings, or field views may be with PennDOT, the State Historic Preservation Office, the Federal Highway Administration, and/or other consulting parties. Prepare and distribute minutes from the conference calls, meetings, or field views. 5. At the request of the PennDOT District Cultural Resource Professional(s), prepare an Above Ground Historic Property Survey and Determination of Eligibility report, following the guidance in Publication 689, Chapter XII. The report will not automatically need to be prepared every time a survey is conducted; in some situations, the CRP may request only PHRS forms with no report. 6. Coordinate investigations with archaeologist conducting tasks under 2.2.29 <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all Pennsylvania Historic Resource Survey (PHRS) short or full forms. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of conferences calls, meetings, or field views held to discuss

2.2.30.5	Proposed
	the surveys or their results. 3. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of Above Ground Historic Property Survey and Determination of Eligibility report.
Detail	

2.2.30.6	Proposed
Description	Finding of Effect
Objective	<p>The objective of this task is to assess the effect of the project on above ground historic properties, including historic structures, buildings, and districts eligible for listing in or listed in the National Register of Historic Places, and National Historic Landmarks within the project's area of potential effects (APE).</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts Section 800.4, 800.5, and 800.10 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter VIII and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), assess the effect of the project on above ground historic properties, including historic structures, buildings, and districts eligible for listing in or listed in the National Register of Historic Places, and National Historic Landmarks within the project's area of potential effects (APE).</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Determine if the project will have an effect on any eligible or listed above ground historic properties within the APE, following the guidance in Publication 689, Chapter VIII; if the project will not have an effect, recommend a finding of No Historic Properties Affected. 3. If the project will have an effect on eligible or listed above ground historic properties, apply the criteria of adverse effect, 36 CFR Part Section 800.5, and recommend a finding of No Adverse Effect or Adverse Effect. 4. At the request of the PennDOT District Cultural Resource Professional(s), participate in conference calls, meetings, or field views to discuss the results of the survey and how to proceed. The conference calls, meetings, or field views may be with PennDOT, the State Historic Preservation Office, the Federal Highway Administration, and/or other consulting parties. Prepare the distribute minutes from the conference calls, meetings, or field views. 5. At the request of the PennDOT District Cultural Resource Professional(s), prepare a Determination of Effect report, following the guidance in Publication 689, Chapter XII. The report will not automatically need to be prepared every time a survey is conducted; in some situations, the CRP may request an Above-Ground Field Assessment and Finding form, a table, or a narrative with no report. 6. For projects affecting a historic bridge, coordinate the finding of effects with a Feasibility Analysis (see WBS 2.3.7.4). <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural

2.2.30.6	Proposed
2.2.30.6	<p>Resource Professional(s), paper copies of the Determination of Effect report. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of conferences calls, meetings, or field views held to discuss the surveys or their results.</p>
Detail	

2.2.30.7	Proposed
Description	Public Involvement on the Historic Built Environment
Objective	The objective of this task is to assist the PennDOT District Cultural Resource Professional(s) with continuing consultation with consulting parties established during early coordination, continue coordination with the public, seek out additional consulting parties concerning above ground historic properties, including historic structures, buildings, districts, and National Historic Landmarks within the project's area of potential effects (APE).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.3 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VI, VII, and VIII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), assist the PennDOT District Cultural Resource Professional(s) with continuing consultation with consulting parties established during early coordination, continue coordination with the public, seek out additional consulting parties concerning above ground historic properties, including historic structures, buildings, districts, and National Historic Landmarks within the project's area of potential effects (APE).</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. At the direction of the PennDOT District Cultural Resource Professional(s), participate in project public meeting(s) or schedule and hold a cultural resources specific public meeting(s): <ol style="list-style-type: none"> a) Prepare meeting announcements and/or flyers. b) Prepare visual materials, including posterboards and handouts. c) Attend meeting and address comments. d) Inform the public about known information about cultural resources within the APE. e) Solicit information from the public on cultural resources within the APE. f) Prepare minutes of the meeting. g) Provide consulting party application form to appropriate individuals/groups. 3. Prepare documentation for distribution to consulting parties, including Reconnaissance Survey reports, Historic Context reports, Above Ground Historic Property Survey and Determination of Eligibility reports, or Determination of Effects reports, as appropriate. 4. Identify additional potential consulting parties, if appropriate. <ol style="list-style-type: none"> a) Prepare and mail document for contacting consulting parties, using template on Project Path server; include consulting party application form on Project Path server. b) In consultation with District's Cultural Resource Professional(s), contact potential consulting parties by telephone or email and/or meet with them; document every telephone call and meeting with a memo summarizing discussion.

2.2.30.7	Proposed
	<p>5. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide materials such as project descriptions, maps, reports, or short summaries of archaeological investigations for submission to Federally Recognized Tribes/Nations. 2. Provide and mail paper copies of document for contacting consulting parties, including consulting party application form. 3. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all correspondence (letters, forms, and emails) to and from potential and active consulting parties and memos summarizing each individual telephone conversation and meeting. 4. Provide, display, and/or distribute electronic paper copies of public meeting materials, including announcements, flyers, posterboards, and handouts. 5. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of public meetings. 6. Provide additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).
Detail	

2.2.30.8	Proposed
Description	Reconnaissance Surveys
Objective	The objective of this task is to use existing information about known and potential above ground historic properties in and adjacent to the project's area of potential effects (APE) to provide an aid in evaluating project alternatives for large projects as part of a phased identification approach.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36CFR Part 800.4 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters VII and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), use existing information about known and potential above ground historic properties in and adjacent to the project's area of potential effects (APE) to provide an aid in evaluating project alternatives for large projects as part of a phased identification approach.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Perform a Reconnaissance Survey, following the guidance in Publication 689, Chapter VII. <ol style="list-style-type: none"> a) Evaluate the area for the kinds of historic properties present. b) Establish property types c) Affirm which of any previously evaluated or surveyed properties are extant. d) Determine whether significant changes have occurred to previously evaluated or surveyed properties since their evaluation/survey. e) Catalog the locations of properties over 50 years and assess the likelihood that non-evaluated properties would be eligible for listing in the National Register of Historic Places. f) Assess the area for the possibility of historic districts, including rural historic districts. g) Provide recommendations for the use of short forms on properties and/or determine if properties should be eliminated from further recordation and research. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Reconnaissance Survey report.
Detail	

2.2.31	Proposed
Description	Resolution of Adverse Effects
Objective	<p>The objective of this task is for PennDOT to consult with the Federal Highway Administration, the State Historic Preservation Office, Federally Recognized Tribes/Nations, and other consulting parties to resolve adverse effects on historic properties within the area of potential effect (APE), leading to an executed Memorandum of Agreement and the formal conclusion of Section 106 consultation. In situations where the effect of the project on historic properties is unknown prior to the approval of the environmental document, develop a project specific Programmatic Agreement.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Consultation with Consulting Parties and the Public 2. Memorandum of Agreement /Programmatic Agreement <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtasks.
Detail	

2.2.31.6	Proposed
Description	Consultation with Consulting Parties and the Public
Objective	The objective of this task is to engage in consultation with consulting parties and the public to resolve adverse effects on historic properties which are eligible for listing in or listed in the National Register of Historic Places within the project's area of potential effects (APE).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.3 and 800.6 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), engage in consultation with consulting parties and the public to resolve adverse effects on historic properties which are eligible for listing in or listed in the National Register of Historic Places within the project's APE.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Participate in conference calls, meetings, or field views to discuss possible resolutions to the adverse effect. The conference calls, meetings, or field views may be with PennDOT, the State Historic Preservation Office, the Federal Highway Administration, and/or other consulting parties. Prepare the distribute minutes from the conference calls, meetings, or field views. 3. Based on the consultation with all parties, develop options for resolving adverse effects. <ol style="list-style-type: none"> a) Consider Standard Treatments, where appropriate, following the guidance in Publication 689, Chapter X. b) Where Standard Treatments are not appropriate, develop alternative options for resolving adverse effects. 4. At the direction of the PennDOT District Cultural Resource Professional(s), participate in project public meeting(s) or schedule and hold a cultural resources specific public meeting(s): <ol style="list-style-type: none"> a) Prepare meeting announcements and/or flyers. b) Prepare visual materials, including posterboards and handouts. c) Attend meeting and address comments. d) Inform the public about known information about cultural resources within the APE. e) Solicit information from the public on resolving the adverse effect. f) Prepare minutes of the meeting. 5. In consultation with District's Cultural Resource Professional(s), contact consulting parties by telephone or email; document every telephone call with a memo summarizing discussion. 6. Prepare additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s). <p>Scope Deliverables:</p>

2.2.31.6	Proposed
	<ol style="list-style-type: none"> 1. Provide, display, and/or distribute electronic paper copies of public meeting materials, including announcements, flyers, posterboards, and handouts. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of minutes of consulting party or public meetings. 3. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all correspondence (letters, forms, and emails) to and from potential and active consulting parties and memos summarizing each individual telephone conversation and meeting. 4. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies or proposed Standard Treatments or other proposed options for resolving adverse effects. 5. Provide additional materials for submission to consulting parties, at the direction of the PennDOT District Cultural Resource Professional(s).
Detail	

2.2.31.7	Proposed
Description	Memorandum of Agreement/Programmatic Agreement
Objective	The objective of this task is to prepare a legal memorandum of agreement that resolves adverse effects and concludes formal consultation under Section 106 of the National Historic Preservation Act or a project specific programmatic agreement that specifies the process through which historic properties will be identified and adverse effects will be resolved.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.6 and 800.14 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), prepare a legal memorandum of agreement that resolves adverse effects and concludes formal consultation under Section 106 of the National Historic Preservation Act or a project specific programmatic agreement that specifies the process through which historic properties will be identified and adverse effects will be resolved.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Prepare a Memorandum of Agreement documenting the resolution of a project's adverse effects, based on prior consultation under WBS 2.2.31.6, and following guidance in Publication 689, Appendix 4, 5, or 6. 3. Prepare a Programmatic Agreement in situations where the effect of the project on historic properties is unknown prior to the approval of the environmental document, following guidance in Publication 689, Appendix 3. <p>Scope Deliverables</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Memorandum of Agreement. 2. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of the Programmatic Agreement.
Detail	

2.2.32	Proposed
Description	Archaeological Mitigation
Objective	The objective of this task is to mitigate adverse effects of the project on archaeological sites eligible for or listed in the National Register of Historic Places within the project's area of potential effects (APE), as specified in the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - National Register Bulletin Guidelines for Evaluating and Registering Archeological Properties - Advisory Council's Handbook on the Treatment of Archaeological Properties - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR Part 61.3 (b) and Chapter 6, Section C.1.a) - Pennsylvania Historical and Museum Commission's "<u>Guidelines for Archaeological Investigations in Pennsylvania</u>" - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters IX and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Archaeological Data Recovery Excavations (Phase III) 2. Archaeological Alternative or Creative Mitigation <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtasks.
Detail	

2.2.32.1	Proposed
Description	Data Recovery Excavations (Phase III)
Objective	The objective of this task is to mitigate the adverse effects of project on archaeological resources eligible for or listed on the National Register of Historic Places through the recovery of information through Archaeological Data Recovery Excavations (Phase III), as specified in a Memorandum of Agreement (MOA) or Programmatic Agreement (PA).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - National Register Bulletin Guidelines for Evaluating and Registering Archeological Properties - Advisory Council’s Handbook on the Treatment of Archaeological Properties - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR Part 61.3 (b) and Chapter 6, Section C.1.a) - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters IX and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), mitigate the adverse effects of project on archaeological resources eligible for or listed on the National Register of Historic Places through the recovery of information through Archaeological Data Recovery Excavations (Phase III), as specified in a Memorandum of Agreement (MOA) or Programmatic Agreement (PA). A public involvement component will generally be included as component of the mitigation; the public involvement Scope of Work is specified in 2.2.34.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Perform Archaeological Data Recovery Excavations (Phase III), as specified in the MOA or PA. <ol style="list-style-type: none"> a) Conduct appropriate background research, field testing, and laboratory analysis, and provide interpretations, in accordance with the executed MOA or PA and following the Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> and Publication 689, Chapter IX. b) Prepare an Archaeological Data Recovery Excavations report, following the guidelines in the Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> and Publication 689, Chapter VII. 3. Prepare artifacts for curation following the guidelines in Publication 689, Chapter XIV. <ol style="list-style-type: none"> a) If the artifacts were recovered from private property, request that the property owner sign the Pennsylvania Historical and Museum Commission’s Accessions Form and Gift Agreement donating the artifacts to the State Museum. If the property owner does not wish to sign the gift agreement, the artifacts must be returned to the owner, following the procedures provided in Publication 689, Chapter XIV.

2.2.32.1	Proposed
	<p>b) If the artifacts were recovered from state property or the property owner chooses to donate the artifacts, process the artifacts and associated documentation in accordance with the Pennsylvania Historical and Museum Commission, The State Museum of Pennsylvania, Archaeology Curation Guidelines and transmit them to the PHMC. Provide a copy of proof of delivery to the Cultural Resources professional.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and at least one paper copy on acid-free paper, of the Archaeological Data Recovery Excavations (Phase III) report. The PennDOT District Cultural Resource Professional(s) may request additional paper copies. 2. Transmit the archaeological artifact collections which were recovered from state property or for which the property owners are donating the collections to the PHMC. Ensure that the collection has been processed in accordance with the PHMC's Curation Guidelines and include the signed Accessions Form and Gift Agreement and a paper copy of the Archaeological Data Recovery Excavations (Phase III) report on acid-free paper.
Detail	

2.2.32.2	Proposed
Description	Alternative or Creative Mitigation
Objective	The objective of this task is to mitigate the adverse effects of project on historic or archaeological resources eligible for or listed on the National Register of Historic Places through measures other than Archaeological Data Recovery Excavations (Phase III), as specified in a Memorandum of Agreement (MOA) or Programmatic Agreement (PA).
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - National Register Bulletin Guidelines for Evaluating and Registering Archeological Properties - Advisory Council’s Handbook on the Treatment of Archaeological Properties - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR Part 61.3 (b) and Chapter 6, Section C.1.a) - Pennsylvania Historical and Museum Commission’s <u>“Guidelines for Archaeological Investigations in Pennsylvania”</u> (where applicable) - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), mitigate the adverse effects of project on archaeological resources eligible for or listed on the National Register of Historic Places through measures other than Archaeological Data Recovery Excavations (Phase III), as specified in a Memorandum of Agreement (MOA) or Programmatic Agreement (PA). A public involvement component will generally be included as component of the mitigation; the public involvement Scope of Work is specified in 2.2.34.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Implement the alternative or creative mitigation, as specified in the MOA or PA. 3. Prepare documentation of the alternative or creative mitigation, as specified in the MOA or PA. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and at least one paper copy on acid-free paper, of the documentation of the alternative or creative mitigation. The PennDOT District Cultural Resource Professional(s) may request additional paper copies.
Detail	

2.2.33	Proposed
Description	Above Ground Historic Properties Mitigation
Objective	The objective of this task is to mitigate adverse effects of the project on above ground historic properties (historic structures, buildings, and districts) eligible for the National Register of Historic Places within the project's area of potential effects (APE) through the use of standard treatments or project specific mitigation, as specified in the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - Secretary of the Interior's Guidelines for Architectural and Engineering Documentation - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR Part 61.3 (b) and Chapter 6, Section C.1.a) - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters IX and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), the following subtask may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Above Ground Historic Properties Mitigation <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtask.
Detail	

2.2.33.1	Proposed
Description	Above Ground Historic Properties Mitigation
Objective	The objective of this task is to mitigate adverse effects of the project on above ground historic properties (historic structures, buildings, and districts) eligible for the National Register of Historic Places within the project's area of potential effects (APE) through the use of standard treatments or project specific mitigation, as specified in the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - Secretary of the Interior's Guidelines for Architectural and Engineering Documentation - Secretary of the Interiors Standards for Archaeology and Historic Preservation (36 CFR Part 61.3 (b) and Chapter 6, Section C.1.a) - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters IX and XII <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), mitigate adverse effects of the project on above ground historic properties (historic structures, buildings, and districts) eligible for the National Register of Historic Places within the project's area of potential effects (APE) through the use of standard treatments or project specific mitigation, as specified in the Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project. A public involvement component will generally be included as component of the mitigation; the public involvement Scope of Work is specified in 2.2.34.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Implement the mitigation, as specified in the MOA or PA. 3. Prepare documentation of the mitigation, as specified in the MOA or PA. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide electronic copy in native and pdf formats and at least one paper copy on acid-free paper, of the documentation of the alternative or creative mitigation. The PennDOT District Cultural Resource Professional(s) may request additional paper copies.
Detail	

2.2.34	Proposed
Description	Archaeological Mitigation and Above Ground Historic Properties Mitigation: Standards for Public Outreach and Education
Objective	The objective of this task is to develop appropriate public outreach and education products for consulting parties, the general public, and students, to mitigate the adverse effect a project has on properties eligible for or listed in the National Register of Historic Places, as specified in the project's Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), any or all of the following subtasks may be implemented:</p> <p>Scope Subtask:</p> <ol style="list-style-type: none"> 1. Standards for Public Outreach and Education <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtask.
Detail	

2.2.34.1	Proposed
Description	Standards for Public Outreach and Education
Objective	The objective of this task is to develop appropriate public outreach and education products for consulting parties, the general public, and students, to mitigate the adverse effect a project has on properties eligible for or listed in the National Register of Historic Places, as specified in the project’s Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.6 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter IX <p>Scope:</p> <p>At the direction of the PennDOT District Cultural Resource Professional(s), develop appropriate public outreach and education products for consulting parties, the general public, and students, to mitigate the adverse effect a project has on properties eligible for or listed in the National Register of Historic Places, as specified in the project’s Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project, following the guidance in Publication 689, Chapter IX.</p> <p>The Scope of Work may include one or more of the following activities:</p> <ol style="list-style-type: none"> 1. Prior to beginning this task, contact the PennDOT District Cultural Resource Professional(s) to confirm the specific details of the Scope of Work. 2. Archaeological Site Tours: Develop and implement on-site public tours of archaeological data recovery excavations in progress. 3. Books: Prepare a popular book for non-professionals for publication. 4. Brochures/Pamphlets: Prepare brochures/pamphlets for distribution to local residents. 5. Byways to the Past Booklets: Prepare a booklet for the general public for the Byways to the Past series. 6. Exhibits: Prepare a traveling or permanent exhibit for non-professionals at a local or regional location(s). 7. Films and Videos: Prepare an education film in a format that is appropriate to the target audience’s age and level of education. 8. Informational Kiosks: Develop, erect, and staff kiosks at public meetings, schools, professional meetings, commercial locations, fairs, and other public venues. 9. Lesson Plans: Prepare lesson plans in accordance with the standards promulgated the Pennsylvania Department of Transportation for History, Social Studies, and other appropriate disciplines. 10. National Register/Historic Landmark Nominations: Prepare National Register and/or National Historic Landmark nominations. 11. Posters: Prepare promotional posters for the general public. 12. Public Lectures and Presentations: Prepare and deliver public lectures and presentations for the general public and/or historic preservation professionals. 13. Roadside Signage and Markers/Commemorative Plaques: Produce roadside signage and

2.2.34.1	Proposed
	<p>markers/commemorative plaques.</p> <p>14. Websites: Develop educational and informative websites.</p> <p>15. Workshops/Classes: Develop and instruct workshops/classes.</p> <p>16. Other Appropriate Public Outreach and Education Products: Develop other appropriate public outreach and public education projects, as specified in the project’s Memorandum of Agreement (MOA) or Programmatic Agreement (PA) for the project.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Archaeological Site Tours: Develop and implement site tours. 2. Books: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 3. Brochures/Pamphlets: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 4. Byways to the Past Booklets: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 5. Exhibits: Provide exhibit of artifacts and/or photographs and drawings. 6. Films and Videos: Provide electronic version of film or video. 7. Informational Kiosks: Develop, erect, and staff kiosk. 8. Lesson Plans: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 9. National Register/Historic Landmark Nominations: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 10. Posters: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 11. Public Lectures and Presentations: Provide electronic copy, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies. 12. Roadside Signage and Markers/Commemorative Plaques: Provide roadside signage or markers/commemorative plaques. 13. Websites: Provide website. 14. Workshops/Classes: Develop and present workshops/classes.
Detail	

2.2.35	Proposed
Description	Management Consulting
Objective	The objective of this task is for consultants who have been delegated by PennDOT Central Office as PennDOT District Cultural Resource Professional(s) to function as PennDOT District Cultural Resource Professional(s) and perform activities such as scoping, Tribal Consultation, document review, and coordination.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800.3 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III and IV - Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals <p>Scope:</p> <p>At the direction of the PennDOT Environmental Manager (or Designee), any or all of the following subtasks may be implemented:</p> <p>Scope Subtasks:</p> <ol style="list-style-type: none"> 1. Scoping 2. Tribal Consultation 3. Document Review 4. Coordination <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. See individual subtasks

2.2.35.1	Proposed
Description	Scoping
Objective	<p>The objective of this task is for consultants who have been delegated by PennDOT Central Office as Cultural Resource Professional(s) (CRPs) to function as PennDOT District CRPs and to perform the necessary tasks to prepare for the project scoping field view (SFV) for cultural resources, including identifying previously known or potentially eligible historic properties within the project's area of potential effect (APE), attend the scoping field view with the PennDOT Project Manager and Environmental Manager (or District Designee), and determine which cultural resource activities will be necessary for the project.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.3 and 800.4 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania -Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III and IV -Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals <p>Scope:</p> <p>At the direction of the PennDOT Environmental Manager/District Designee, perform the necessary tasks to prepare for the initial project scoping field view, including identifying previously identified historic properties, attend the scoping field view, and determine what cultural resource activities will be necessary for the project. Archaeology CRPs will complete Scoping for archaeological resources and Architectural History CRPs will complete Scoping for above ground historic properties.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to the SFV, obtain and review a project description from the PennDOT Environmental Manager/District Designee and a map locating the project, as well as any plans that may be available. 2. Identify known and mapped archaeological and historic properties within and adjacent to the project area, using the Pennsylvania Historical and Museum Commission's (PHMC) Cultural Resources Geographic Information System (CRGIS). The Architectural History CRP will also search the PHMC's online list of properties on the National Register of Historic Places and will search the CRGIS for unmapped historic properties within the project region's municipalities. The Architectural History CRP may need to conduct further research to gather information (including the review of photographs), or have that research conducted on their behalf, in order to identify the location of these resources within the study region. 3. Obtain and examine historic maps, soil maps, "As-Built" plans, or other mapping in the District office, and other pertinent information such as historical aerial photographs. 4. Prior to the SFV, provide the PennDOT Project Manager with a map of the project study region on a 7.5 minute USGS topographic base, depicting the project area and locating and labeling all identified archaeological and historic properties; and a tabular synopsis of information about each mapped resource. 5. If the SFV for cultural resources is to be separate from the larger engineering and environmental SFV, complete the additional steps: <ol style="list-style-type: none"> a) Schedule a SFV with the Project Manager and the Environmental Manager/Designee.

2.2.35.1	Proposed
	<p>b) If the engineering and environmental SFV has been previously conducted, acquire a copy of the SFV form and any prior scoping comments from the District CRPs, and distribute to the cultural resource SFV team prior to the cultural resource SFV.</p> <p>6. Attend the SFV or cultural resource SFV. During the field view, define the area of potential effects (APE). Architectural History CRPs will identify whether eligible or potentially eligible above ground historic properties exist within the project APE and Archaeology CRPs will assess the archaeological potential within the archaeological APE, which is a subset of the larger project APE and includes any areas in which ground disturbing activities may occur. Make recommendations during the field view on whether additional cultural resource studies are necessary.</p> <p>7. Provide direction to the PennDOT Project Manager and Environmental Manager (or District Designee) on completion of the Cultural Resources section of the Scoping Field View form.</p> <p>8. After the field view, take one of the following courses of action:</p> <p>a) In an internal PennDOT memorandum, recommend a project as exempt under Appendix C.2.a and C.2.b of the Statewide Section 106 Programmatic Agreement as appropriate; record the exemption in the CE Expert System, either on Page B:A-4 of the CEE/ED form, or in the Bridge and Roadway Programmatic Agreement Applicability Matrix.</p> <p>b) Make a combined early notification and project finding and post it on the Project PATH server. This may only be used when both above ground historic properties and archaeology findings can be made without the need for further studies and where there is sufficient project information to make the finding following the field view.</p> <p>c) Complete the <i>Project Early Notification/Scoping Results Form</i> that discusses the presence of known and/or potentially eligible cultural resources; whether additional studies are needed to identify historic or archaeological resources; and whether additional project information is required to make a determination concerning the need for cultural resource studies and post the form on the Project PATH server. As necessary, prepare an internal PennDOT memorandum that provides additional narrative with specific direction on cultural resource tasks to be performed that might compromise archaeological sites if known to the public, or contains information that would otherwise be kept confidential.</p> <p>Scope Deliverables:</p> <p>1. Provide electronic and paper for use during the field view: A map of the project study region on a 7.5 minute USGS topographic base, depicting the project area and locating and labeling all identified archaeological and historic properties; and a tabular synopsis of information about each mapped resource.</p> <p>2. Provide direction on completion of Cultural Resources portion of the Scoping Field View form, either verbally during the SFV or written.</p> <p>3. Provide electronic copy of one or more of the following:</p> <p>a) Internal PennDOT memorandum recommending project exempt.</p> <p>b) Recordation of the exemption in the CE Expert System.</p> <p>c) Combined early notification and project finding posted on the Project PATH server.</p> <p>d) <i>Project Early Notification/Scoping Results Form</i> posted on the Project PATH server.</p>
Detail	

2.2.35.2	Proposed
Description	Tribal Consultation
Objective	<p>The objective of this task is for consultants - delegated by PennDOT Central Office and with the consent of FHWA - to function as the principal PennDOT District Cultural Resource Professional Archaeologist in a District, to involve Federally Recognized Native American Tribes/Nations early in project development and involve them in consultation to the degree of their interest.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Parts 800.2 and 800.3 - Native American Graves Protection and Repatriation Act - Programmatic Agreement for among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III and V - Publication 591: Pennsylvania Department of Transportation: the Transportation Project Development Process Tribal Consultation Handbook - Publication 592: Pennsylvania Department of Transportation: the Transportation Project Development Process Tribal Consultation Handbook Appendix <p>Scope:</p> <p>At the direction of the PennDOT Environmental Manager/District Designee, involve Federally Recognized Native American Tribes/Nations early in project development and involve them in consultation to the degree of their interest.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Determine for which projects involving Federally Recognized Native American Tribes/Nations is appropriate, following Publication 591 and 592. 2. For projects for which involving Federally Recognized Native American Tribes/Nations is appropriate, complete and submit a PennDOT Project Initial Tribal Notification Form and Project Early Notification/Scoping Results Form to the Tribes/Nations which have an interest in the area in which the project is located. The forms should be transmitted electronically for Tribes/Nations which accept electronic submission; for Tribes/Nations who prefer paper copies, a self-addressed, stamped envelope to the PennDOT District Cultural Resource Professional Archaeologist should be included when the forms are mailed to the Tribe/Nation. The forms should also be submitted electronically to the FHWA environmental review team member, the PennDOT Bureau of Design Environmental Quality Assurance Division, the PennDOT District Environmental Manager, and the PennDOT District Project Manager. 3. Using the Project Information Form, complete and submit subsequent submissions to the Tribes/Nations unless the Tribe/Nation directs otherwise. The subsequent submissions will include project status and results of studies. Submissions of requests for consultation, reports, proposed findings, proposed mitigation measures, and documentation of decisions to the State Historic Preservation Office should be made simultaneously to the Tribes/Nations. 4. Initiative and participate in informal consultation, including telephone conversations, on-site meetings, web

2.2.35.2	Proposed
	<p>sites, and email with the Tribes/Nations. Document each individual contact that is not electronically documented with a memo.</p> <p>5. Immediately contact via telephone the FHWA environmental review team member, the PennDOT Bureau of Design Environmental Quality Assurance Division, the PennDOT District Environmental Manager, and the PennDOT District Project Manager if burials are discovered during any stage of archaeological investigations or during construction. Document the telephone call with an email to all parties. FHWA will consult with the Tribes/Nations to determine how to proceed.</p> <p>6. Inform electronically the FHWA environmental review team member if any Tribe/Nation wishes to obtain any artifacts recovered from privately owned or Commonwealth land. FHWA will consult with the Tribes/Nations to determine how to proceed.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide and submit electronic, and if the Federally Recognized Tribes/Nations prefers, paper copies, paper copies of the PennDOT Project Initial Tribal Notification Form and Project Early Notification/Scoping Results Form. 2. Provide and submit electronic, and if the Federally Recognized Tribes/Nations prefers, paper copies of the Project Information Form, with attached appropriate documentation. 3. Provide and submit electronic, and if the Federally Recognized Tribes/Nations prefers, paper copies of documentation of telephone conversations, on-site meetings, web sites, and email with Federally Recognized Tribes/Nations. 4. Submit electronic notification of the discovery of burials during archaeological investigations or construction. 5. Submit electronic notification of requests from the Federally Recognized Tribes/Nations to obtain artifacts recovered from privately owned or Commonwealth land.
Detail	

2.2.35.3	Proposed
Description	Document Review
Objective	The objective of this task is for consultants who have been delegated by PennDOT Central Office as PennDOT District Cultural Resource Professional(s) to function as PennDOT District Cultural Resource Professional(s) and perform document review and submission.
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800 - Pennsylvania Historical and Museum Commission's "Cultural Resource Management in Pennsylvania: <u>Guidelines for Archaeological Investigations</u>" - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapters III and IV - Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals <p>Scope:</p> <p>At the direction of the PennDOT Environmental Manager/District Designee, review all documentation prepared by other consultants for cultural resources, provide comments to the consultant, the PennDOT Environmental Manager/District Designee, and the PennDOT District Project Manager, if appropriate.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Review cultural resources documentation prepared by other consultants to ensure compliance with Publication 689, Chapter XII and the Pennsylvania Historical and Museum Commission's "<u>Guidelines for Archaeological Investigations in Pennsylvania.</u>" Documentation may include, but is not limited to: <ol style="list-style-type: none"> a) Reconnaissance Survey report b) Historic Context report c) Pennsylvania Historic Resource Survey Forms d) Above Ground Historic Properties Survey – Determination of Eligibility report e) Determination of Effect report f) Feasibility Analysis report h) Geomorphology report i) Archaeology Predictive Model report k) Archaeology Sensitivity/Phase IA report l) Archaeology Record of Disturbance Form m) Phase I Archaeology Negative Survey Form n) Archaeological Identification (Phase I) full report o) Archaeological Identification and Evaluation (Phase I and II) report p) Archaeological Data Recovery Excavations (Phase III) report q) Management Summaries of cultural resource work r) Proposed workplans/mitigation measures s) Documentation of consultation with consulting parties

2.2.35.3	Proposed
	<p>t) Mapping depicting avoidance of historic properties u) Meeting/field view/conference call minutes</p> <p>2. If the cultural resource documentation does not meet the above referenced guidance, provide the consultant, the PennDOT Environmental Manager/District Designee, and the PennDOT District Project Manager with an electronic memo containing comments and request that the consultant revise the documentation.</p> <p>3. Make findings of eligibility and effect, on behalf of the FHWA, based on the information provided in the cultural resources documentation.</p> <p>Scope Deliverables:</p> <p>1. Provide electronic memorandum to consultant preparing cultural resources documentation, the PennDOT Environmental Manager/District Designee, and PennDOT District Project Manager with comments and requests for revisions.</p> <p>3. Provide electronic copy of response to comments from consulting parties.</p>

2.2.35.4	Proposed
Description	Coordination
Objective	<p>The objective of this task is for consultants who have been delegated by PennDOT Central Office as PennDOT District Cultural Resource Professional(s) to function as PennDOT District Cultural Resource Professional(s) and perform all cultural resources coordination necessary to complete the Section 106 process with the PennDOT Environmental Manager/District Designee, the PennDOT District Project Manager, the Advisory Council on Historic Places (ACHP), the State Historic Preservation Office (SHPO), Federal Highway Administration (FHWA), the National Park Service, and other consulting parties.</p>
Statement of Work	<p>Guidance:</p> <ul style="list-style-type: none"> - 36 CFR Part 800 - Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic State Preservation Officer, and the Pennsylvania Department of Transportation Regarding Implementation of the Federal Aid Highway Program in Pennsylvania - Publication 689: Pennsylvania Department of Transportation: the Transportation Project Development Process Cultural Resources Handbook, Chapter III - Cultural Resources Administrative Procedures for PennDOT Cultural Resources Professionals <p>Scope:</p> <p>At the direction of the PennDOT Environmental Manager/District Designee, perform all cultural resources coordination necessary to complete the Section 106 process with the PennDOT Environmental Manager/District Designee, the PennDOT District Project Manager, the Advisory Council on Historic Places (ACHP), the State Historic Preservation Office (SHPO), Federal Highway Administration (FHWA), and other consulting parties.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Provide written electronic internal communication to the PennDOT Environmental Manager/District Designee and the PennDOT District Project Manager concerning recommendations on technical cultural resources issues for projects and general cultural resources information. Provide all recommendations and technical information in writing, even if it has been given verbally, as documentation for the project file. 2. Post documentation to the Project PATH server or IUP server (as warranted), and notify the Federal Highway Administration, the State Historic Preservation Office, and other consulting parties. Submit paper copies to consulting parties who have requested them. 3. Using Project PATH, address comments received from Federal Highway Administration, the State Historic Preservation Office, and other consulting parties on the cultural resources documentation. Submit paper copies to consulting parties who have requested them. 4. Notify FHWA of an adverse effect on a property eligible for listing in the National Register of Historic Places in order for FHWA to notify the Advisory Council on Historic Preservation, and provide documentation, following Publication 689., Chapter VIII, when: <ol style="list-style-type: none"> a) The undertaking will adversely affect a National Historic Landmark. b) The effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effect on historic properties. c) When PennDOT, the SHPO, and FHWA are not able to reach agreement on the resolution of adverse effect. 5. Conduct consultation with the FHWA, SHPO, other consulting parties, and the public.

2.2.35.4	Proposed
	<p>a) Contact property owners, local collectors, and other individuals or groups who are not contacted by Preservation Pennsylvania, as appropriate, who may have knowledge of archaeological sites or above ground historic properties within the APE.</p> <p>c) Prepare and mail document for contacting consulting parties, using template on Project Path server; include consulting party application form on Project Path server.</p> <p>d) Contact potential consulting parties by telephone or email and/or meet with them; document every telephone call and meeting with a memo summarizing discussion.</p> <p>e) Participate in project public meeting(s) or schedule and hold a cultural resources specific public meeting(s):</p> <p>f) Prepare meeting announcements and/or flyers.</p> <p>g) Prepare visual materials, including posterboards and handouts.</p> <p>h) Attend meeting and address comments.</p> <p>i) Inform the public about known information about cultural resources within the APE.</p> <p>j) Solicit information from the public on cultural resources within the APE.</p> <p>f) Prepare minutes of the meeting.</p> <p>g) Provide consulting party application form to appropriate individuals/groups.</p> <p>h) Prepare additional materials for submission to consulting parties, when appropriate.</p> <p>4. Contact the National Park Service with written correspondence when a project has the potential to affect a National Historic Landmark or a National Park Service property, following guidance in Publication 689, Chapter III.</p> <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Provide written electronic internal communication to the PennDOT Environmental Manager/District Designee and the PennDOT District Project Manager concerning recommendations on technical cultural resources issues for projects and general cultural resources information. 2. Provide written electronic communication to FHWA of an adverse effect on a property eligible for listing in the National Register of Historic Places and provide documentation, following Publication 689., Chapter VIII, when appropriate. 3. Provide and mail paper copies of document for contacting consulting parties, including consulting party application form. 4. Provide electronic copy in native and pdf formats and, at the discretion of the PennDOT District Cultural Resource Professional(s), paper copies of all correspondence (letters, forms, and emails) to and from potential and active consulting parties and memos summarizing each individual telephone conversation and meeting. 5. Provide, display, and/or distribute electronic paper copies of public meeting materials, including announcements, flyers, posterboards, and handouts. 6. Provide minutes of public meetings. 7. Prepare additional materials for submission to consulting parties, when appropriate. 8. Provide and mail written correspondence to the National Park Service when a project has the potential to affect a National Historic Landmark or a National Park Service property, following guidance in Publication 689, Chapter III.

2.3.7.4	Proposed
Description	Feasibility Analysis (for Historic Bridges)
Objective	This task consists of the preparation of a Feasibility analysis that will determine whether a historic bridge can be rehabilitated to meet the established need.
Statement of Work	<p>Guidance: - Publication 689, Cultural Resources Handbook, Chapter 8:5-6 and Chapter 12:5-6.</p> <p>Scope: Prepare a Feasibility analysis that will determine whether a historic bridge can be rehabilitated to meet the established need.</p> <p>The Scope of Work will include the following activities:</p> <ol style="list-style-type: none"> 1. Prior to initiating activities, contact the District Cultural Resources Professional (CRP) and review the work plan. 2. Review and document existing relevant documentation that has been prepared relevant for an anticipated Section 4(f) analysis. 3. Review and document existing purpose and need of the project to make sure it is appropriate. Work with project manager to revise purpose and need as necessary. 4. Review and document why the bridge is significant (eligible to the National Register) including what the historically significant features are. 5. Review and document the condition of the bridge, including deficiencies and what the structural needs are. 6. Review and document other bridges on the network in the immediate vicinity of the bridge and constraints on their use. 7. Conduct a detailed analysis of the rehabilitation alternative including an explanation of whether the bridge can be made adequate for the intended use of the bridge. Include how measures to make the bridge adequate would alter the character defining features (item 4 above). 8. Provide the results and report to the CRP's and preparers of the Section 4(f) analysis. 9. Meet with CRP's and/or FHWA to review and incorporate comments into the Analysis. <p>Scope Deliverables:</p> <ol style="list-style-type: none"> 1. Prepare a Feasibility Analysis Report, minimally containing the following: <ul style="list-style-type: none"> • Environmental Review number (ER) (if available) • Table of contents • List of illustrations • Explanation of why the bridge is significant, including what the historically significant features are. • A map (USGS and/or aerial) showing all relevant constraints. Everything should be identified that will be discussed later in the report. • General description of project area including the setting, land use and constraints, including alternative bridges in the area and their constraints. • A detailed description of the condition of the bridge, including deficiencies, and what the structural needs are. • Describe the use of the bridge including average daily traffic, truck use, emergency vehicle use/need, school bus use/need.

2.3.7.4	Proposed
	<ul style="list-style-type: none">• A viable purpose and need statement. The purpose and need statement cannot preclude a sincere consideration of rehabilitation. Explain the problems the project is trying to solve.• Define design criteria. A bridge rehabilitation may have different design criteria than a new bridge.• Detailed analysis of the rehabilitation alternative(s) including an explanation of whether the bridge can be made adequate for the intended use of the bridge. Include how the measures to make the bridge adequate would affect the character defining features.• Explanation of how Smart Transportation was integrated into the analysis.• Recent photographs of the bridge and environs.• Preliminary lay-outs/plans, if available.• Graphics to support analysis and findings (e.g. elevation of a truss highlighting deficient members).• Relevant previous correspondence (PHMC, public, county or municipal officials, etc.).