

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 highway and bridge transportation projects by understanding the requirements of Section 106 of the National Historic Preservation Act of 1966 (54 USC 300101), 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 for Pennsylvania Department of Transportation (PennDOT) highway and bridge projects according to the nature of the undertaking and its potential for effects to properties listed in, or eligible for listing in, the National Register of Historic Places. While not regulatory, this Handbook serves as guidance for implementing the *Programmatic Agreement Among the Federal Highway Administration, the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, the Pennsylvania State Historic Preservation Officer and the Pennsylvania Department of Transportation Regarding Implementation of the National Historic Preservation Act for Federal Aid Highway Projects and/or Highway Projects Requiring a U.S. Army Corps of Engineers Permit in Pennsylvania* executed on February 17, 2023.

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Appendix 2- PennDOT-SHPO Statewide Memorandum of Understanding

Appendix 3 – Disposal of Real Property and Lease Agreements Programmatic Agreement

Chapter I. INTRODUCTION

This handbook describes the principles, techniques, and procedures for consideration of cultural resources in the development of highway and bridge transportation improvement projects for 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 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 (54 USC 300101), amended 2014:

Section 106 of the National Historic Preservation Act of 1966 (NHPA; hereafter referred to as 'Section 106') 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 Officer (SHPO). In Pennsylvania, the SHPO is located in the State Historic Preservation Office at the Pennsylvania Historical and Museum Commission (PHMC). *For ease of language, this handbook will hereafter refer to the SHPO for actions and activities under the Section 106 regulations that involve the SHPO as well as state-funded actions and activities.*

The Federal Highway Administration (FHWA), which is part of the United States Department of Transportation (US DOT), and the U.S. Army Corps of Engineers (USACE) are responsible for fulfilling the requirements of Section 106 on all of the projects that they assist, fund, permit, license, or approve in Pennsylvania. For FHWA, this includes traditional highway development and improvement projects, as well as projects receiving funds under the Transportation Alternatives Set-Aside (TA Set-Aside) program. For the USACE, this includes permits issued pursuant to Section 404 of the Clean Water Act. FHWA and the USACE have, in turn, delegated much of the process for implementing the requirements of Section 106 to PennDOT through a Programmatic Agreement (PA) executed on February 17, 2023. (see [Appendix 1](#)) *This agreement hereafter will be referred to as the "Section 106 PA" throughout this handbook.*

Section 110 of the National Historic Preservation Act of 1966 (54 USC 306107), amended 2014:

Section 110 of the NHPA specifies the obligations of federal agencies with historic properties under their jurisdiction or control. Section 110 also provides protection for National Historic

Landmarks (NHL). 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 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 in the NRHP, only 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). FHWA has issued a [policy paper](#) on how to use Section 4(f) (July 20, 2012).

Section 2002/Pennsylvania Act 120:

Pennsylvania (PA) Act 120 created a state counterpart to Section 4(f) which was codified in Section 2002 of the Administrative Code of 1929. Section 2002 prohibits use of publicly owned parks, recreation areas, and wildlife or waterfowl refuges and historic properties eligible for, or listed in, the NRHP unless there is no prudent or feasible alternative, and the project includes measures to minimize harm.

Publication 349 includes guidance on Section 2002/Pennsylvania Act 120.

National Environmental Policy Act of 1969, as amended (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 (Title 37 PA Consolidated Statutes):

Section 507 of the [State History Code](#) 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 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 in or are eligible for the Pennsylvania Register of Historic Places.” The Pennsylvania register is synonymous with the listing of resources eligible for listing in 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 in or eligible for the Pennsylvania Register of Historic Places.” The State History Code is sometimes referred to as “Act 70” by PennDOT in reference to the 1995 legislative act that added Section 508.

PennDOT has signed a Memorandum of Understanding (MOU) with the SHPO for review of projects under the State History Code, executed on October 12, 2011 (see [Appendix 2](#)). The review process in the MOU generally follows the process in the Section 106 PA.

B. HANDBOOK APPLICABILITY

1. FHWA Federal-Aid, Permitted, Assisted, or Licensed Projects

The guidance in this handbook applies to all FHWA funded, permitted, licensed, or approved 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 Alternative Set-Aside Projects (TA Set-Aside)

The guidance in this handbook applies to all FHWA TA Set-Aside projects (funded under the current federal infrastructure legislation). As federally-funded projects, TA Set-Aside projects are subject to the provisions of Section 106. PennDOT is available to assist project sponsors in completing the Section 106 process on their behalf.

3. Non-FHWA/Non-USACE Transportation Projects

Transportation Agencies outside of FHWA may also be subject to Section 106, but given that only FHWA and the USACE are signatories to the Section 106 PA, other transportation agencies are not obliged to follow the procedures in this Handbook. When FHWA becomes the lead federal agency for a Federal Transit Administration (FTA), Federal Railroad Administration (FRA), or federal discretionary grant project, the Section 106 PA would apply as would the Handbook. At the request of federal agencies other than FHWA, PennDOT's cultural resources staff would assist in compliance with Section 106, but in these instances, staff would use the methods and techniques outlined in this Handbook. Requests for assistance would be considered on a case-by-case basis.

4. State-Funded Projects

The guidance in this handbook also applies to all state-funded transportation projects. State-funded projects requiring no federal permit (e.g., a permit from the USACE) follow the requirements of the State History Code but not 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 PennDOT District Maintenance Manager, Bridge Engineer or Project Manager must contact the District Environmental Manager 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.
- b) Maintenance activities that could affect stone retaining walls, old tree rows, or building ruins including foundations or other features.
- c) Maintenance activities involving ground disturbance adjacent to cemeteries.

Note regarding disposal of excess right-of-way: When PennDOT disposes of excess right-of-way, the State History Code will be followed except where the land was purchased with federal funding. Disposal of excess right-of-way purchased with federal funds will follow the *Programmatic Agreement Between the Federal Highway Administration and the Pennsylvania Department of Transportation for The Disposal of Real Property and Lease Agreements/Renewals*, which specifies that the new owner must be provided with information about whether there are historic properties, or the potential for historic properties or archaeological sites (see Appendix 3 – Disposal of Real Property and Lease Agreements Programmatic Agreement).

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 SHPO 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 SHPO for their review.

Note: If FHWA funding and/or formal action is involved, such as a point of access study (POA), Section 106 must be followed (with FHWA as the lead federal agency).

5. Public Private Partnerships (P3)

Act 88 of 2012 established the ability for PennDOT and other transportation authorities to enter into agreements with the private sector to participate in the delivery, maintenance, and financing of transportation related projects. A notable example of a P3 project was the Rapid Bridge Replacement of 558 structurally deficient bridges over a three-year period. To the degree that these projects have a federal nexus (either funding or permit) or have state funding or permitting through PennDOT, the Handbook would be applicable. A test of whether a P3 project would have handbook applicability is whether PennDOT would need to approve the related NEPA document.

C. PENNSYLVANIA TRANSPORTATION AND HERITAGE

Pennsylvania Transportation and Heritage ([PATH](#)) is a public consultation web-based database (originally developed as ProjectPATH in partnership with Preservation Pennsylvania) that serves as a clearinghouse for public involvement, and an information database, related to Section 106 and the State History Code for PennDOT highway and bridge projects. PATH is not to be used for processes or documentation outside of Section 106 or the State History Code.

To comply with NEPA and Section 106, FHWA and/or the USACE, through their agent PennDOT, must afford the public and consulting parties the opportunity to consult and comment on the effects PennDOT projects may have on historic and archaeological resources. Both NEPA and NHPA are procedural laws, rather than substantive laws, and therefore, involve several points during the consultation processes when the public is given the opportunity to comment.

PATH provides project-specific Section 106 information in a searchable, geographically referenced, database (<https://path.penndot.pa.gov/ProjectSearch.aspx>).

PATH has the following purposes:

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

All documents, with the exception of unredacted archaeological reports, and sensitive documents and correspondence, produced pursuant to the Section 106/State History Code process, and described in the remainder of this handbook, must be included in PATH. This will include, except where prohibited by law or regulation, or author request, consulting party and public correspondence that is related to the Section 106/State History Code consultation.

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Chapter II. ROLES AND RESPONSIBILITIES

A. FEDERAL HIGHWAY ADMINISTRATION

Under Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, and its implementing regulations, 36 CFR 800, the Federal Highway Administration (FHWA) is responsible for consultation with the State Historic Preservation Officer (SHPO), federally recognized tribes/nations, and other parties including the Advisory Council on Historic Preservation (ACHP). FHWA is responsible for making determinations regarding the area of potential effects (APE), eligibility, and effects. FHWA is also responsible for resolving adverse effects.

In keeping with both the NHPA and the National Environmental Policy Act of 1969 (NEPA), FHWA is responsible for ensuring that decisions regarding historic properties are made with appropriate input from consulting parties and the public. Generally, FHWA is the lead federal agency on Federal-Aid Highway Projects. FHWA has delegated much of their responsibility for fulfilling Section 106 to PennDOT through the Section 106 PA; however, FHWA retains ultimate responsibility where a project has funding from the US DOT.

B. U.S. ARMY CORPS OF ENGINEERS

The U.S. Army Corps of Engineers (USACE) is the lead federal agency under Section 106 for projects that are 100-percent state-funded and require a USACE permit. The USACE has delegated much of their responsibility for fulfilling Section 106 to PennDOT through the Section 106 PA. Through the Section 106 PA the USACE accepts the work PennDOT does on their behalf for fulfilling the requirements of Section 106 and USACE procedures ([33 CFR 325, Appendix C](#)) for implementation of Section 106. For projects requiring a USACE permit that have funding from FHWA, FHWA is the lead federal agency. One difference between 33 CFR 325, Appendix C and the ACHP regulations, is with respect to the permit area (as defined by the USACE) versus what the ACHP defines as the APE. Projects that are 100% state-funded but require a USACE individual permit will follow the requirements of the Section 106 PA except regarding adverse effects to properties outside the permit area. See Chapter XI for further discussion on permit area versus APE.

C. PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

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 federal agency (FHWA and/or USACE) is ultimately responsible for determinations of the APE, eligibility, and effect for federal-aid or permitted projects, PennDOT has been delegated the role of implementing Section 106 through the Section 106 PA. PennDOT initiates consultation with SHPO and other

consulting parties (36 CFR 800.2(c)(5)). PennDOT conducts the necessary investigations and makes determinations on behalf of FHWA and/or 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 which 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 Section

The Cultural Resources Section, within the Bureau of Design and Delivery, Environmental Policy and Development Division, has the primary quality assurance responsibility to ensure that PennDOT's program complies with applicable laws and regulations. To that end, the Cultural Resources Section 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 Section has the responsibility for providing the Districts with CRPs who meet the Secretary of the Interior's (SOI) Professional Qualifications Standards. The Cultural Resources Section 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 resources team, consisting of an Archaeologist and an Architectural Historian. These District CRPs (also referred to as District Archaeologist or District Architectural Historian) shall assist the District Environmental Manager and Project Managers in PennDOT's compliance with Section 106 and the State History Code. Responsibilities of the CRPs may include, but are not limited to:

- a) Participating in Scoping Field Views;
- b) Preparing scopes of work and work plans;
- c) Documenting a project's APE;
- d) Making eligibility and effect determinations;
- e) Reviewing consultant technical and price proposals;
- f) Conducting field meetings with cultural resource consultants during fieldwork and providing guidance;
- g) Reviewing cultural resource reports and management summaries and providing comments;
- h) Coordinating with SHPO and FHWA, and/or USACE;

- i) Reviewing Categorical Exclusion Evaluations (CEEs), Environmental Assessments (EAs), Environmental Impact Statements (EISs) and Section 4(f) Evaluations;
- j) Coordinate and lead the public and consulting party involvement process.

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

3. Consultants

Consultants are used in two different roles at PennDOT – as contracted historic preservation specialists that conduct cultural resources studies under the Section 106 consultation process that are then reviewed by PennDOT staff, or, as an extension of PennDOT staff in the management of the Cultural Resources Program. In the latter, consultants are part of a District cultural resource team.

a. Consultant Historic Preservation Specialists

Many projects involve the assistance of consultants because of the size of the cultural resources program at PennDOT. 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 and make findings (on behalf of FHWA and/or the USACE for projects subject to Section 106).

Consultants should not directly coordinate with SHPO, Tribes/Nations, or state or federal agencies unless requested by the District CRP. 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.

Consultants performing work on behalf of PennDOT must meet, or work under the direct supervision of a person or persons meeting, the SOI's Professional Qualifications Standards.

b. Consultants Functioning as CRPs on Behalf of the Department

Under Stipulations III.E.2 through III.E.4 of the Section 106 PA (see [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 SHPO, 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 Attachment A of the Section 106 PA (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.

Second, a consultant serving as a CRP can only do so in a temporary capacity, defined in the Section 106 PA 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 and hire and train the new staff to assume CRP responsibilities. The two-year period also enables PennDOT to address short-term fluctuations in workload without hiring permanent staff. A consultant CRP may serve longer than two years when covering different positions. For example, a CRP could serve 18 months in District A followed by 18 months in District B. 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 State [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 or 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 the current staff level, 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, then by written approval of FHWA, the USACE and the SHPO, PennDOT may temporarily exceed the 25 percent limit.

D. STATE HISTORIC PRESERVATION OFFICER

The Section 106 regulations (36 CFR 800) prescribe a process for involving "consulting parties." SHPO is one such "consulting party." In Pennsylvania, the office of the SHPO is located in the Pennsylvania Historical and Museum Commission (PHMC) and represents the interests of the Commonwealth 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, consultation occurs with the SHPO regardless of whether the project falls under the State History Code or Section 106. Notwithstanding the terms of the current Section 106 PA, the SHPO is traditionally consulted in:

- Determining and documenting a project's area of potential effects (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).

E. THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

Under the Section 106 regulations (36 CFR 800), the role of the Advisory Council on Historic Preservation (ACHP) is focused at the program level rather than in individual project review. When the SHPO and the lead federal agency 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) or a project-level PA. The ACHP may enter the Section 106 consultation 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).

F. THE KEEPER OF THE NATIONAL REGISTER OF HISTORIC PLACES

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 archaeological resources. The Keeper of the NRHP is the individual in the National Park Service responsible for determining the eligibility of properties for inclusion in the NRHP.

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

On the occasion when no consensus can be reached by the lead federal agency, the SHPO, or Tribes and Nations, any party can request that the Keeper of the NRHP make a formal determination of eligibility, following [36 CFR 63.4](#). The Keeper of the NRHP may also make the formal determination of eligibility when an outside party nominates a historic property

directly to the Keeper of the NRHP for listing in the NRHP. The Keeper of the NRHP will make a formal determination of eligibility when contacted by FHWA or the SHPO (even if consensus is reached between these agencies). That determination is binding for the historic resource.

Another occasion to contact the Keeper of the NRHP would be to nominate a property for listing as part of mitigation. While infrequent, the process would involve the creation of a nomination that is sent to the SHPO and then sent by the SHPO to the Keeper of the NRHP's office.

G. INDIAN (NATIVE AMERICAN) TRIBES AND NATIONS

Federal agencies have legal requirements and/or affirmative obligations to seek out federally recognized Tribes and Nations (the use of the term Tribes and Nations throughout this guidance refers to federally recognized Indian Tribes as defined in 36 CFR 800) and provide meaningful opportunities for consultation. Section 106 of the NHPA is just one of many regulations requiring consultation with Tribes and Nations. Other legislation includes: Archaeological Resources Protection Act of 1979 (ARPA); Native American Graves Protection and Repatriation Act of 1990 (NAGPRA); American Indian Religious Freedom Act of 1978 (AIRFA); Executive Orders 12875 ("Enhancing the Intergovernmental Partnership"), 12898 ("Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations"), 13007 ("Indian Sacred Sites"), 13084 ("Consultation and Coordination With Indian Tribal Governments"), and 13175 ("Consultation and Coordination With Indian Tribal Governments"); Executive Memorandum (2004) Government-to-Government Relationship with Tribal Governments; Presidential Memorandum (2009) Tribal Consultation; and Presidential "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships" (2021). PennDOT most commonly consults with Tribes and Nations under Section 106 of the NHPA. However, PennDOT would also coordinate with Tribes and Nations on State History Code projects. For these projects that result in a lead federal agency other than FHWA, PennDOT would defer to that agency for continued tribal consultation.

Under 36 CFR 800.3(f)(2), federally recognized Indian Tribes (Tribes and Nations) are a consulting party and must be consulted when the Indian Tribe may attach religious and/or cultural significance to historic properties, on or off tribal land. The 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 and Nations are to be consulted in the significance evaluation as well as the determination of eligibility.

The regulations also note that Tribes and Nations, and Native Hawaiian organizations, possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them. Although the Tribes and 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 in the NRHP, the Tribes and Nations must be consulted in applying the Definition of

Effect and Criteria of Adverse Effect. Tribes and Nations may also be invited to be concurring parties to a MOA or Programmatic Agreement (PA). It must be noted that information provided by federally recognized tribes is generally not be subject to Freedom of Information Act (FOIA), or the state equivalent, Right-to-Know Law, requests; as such this information must not be included in PATH.

FHWA, in consultation with PennDOT, the SHPO, and the tribal community has determined that the federally recognized Tribes and Nations with historic ties to the Commonwealth of Pennsylvania are:

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

More detailed information on the process that PennDOT uses to consult with federally recognized Tribes and Nations can be found in [Chapter V](#).

NOTE: Consultation with federally recognized Tribes and Nations, other than those listed above, should be initially completed by the lead federal agency. If a federally recognized Tribe/Nation then agrees to consult with PennDOT, the District Archaeologist will initiate project specific consultation. Other parties claiming Indian descent, but who are not federally recognized, may participate in consultation under Section 106 and NEPA but would not share the same status as a federally recognized Tribe/Nation. 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) (see Section G below). Generally, the PennDOT District archaeologist will coordinate consultation with Tribes and Nations and notify/consult with FHWA or the USACE, where appropriate.

H. ADDITIONAL CONSULTING PARTIES

In accordance with 36 CFR 800.2(c)(6), 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. Representatives of a local government with jurisdiction over the area in which the project occurs are entitled to be consulting parties. Consulting parties are provided the opportunity to participate throughout the Section 106 process and may be invited to concur with a project MOA or PA. Requests to be a consulting party must be in writing to PennDOT, who will make the final decision (in consultation with the SHPO) in granting consulting party status; in any cases where the CRP is inclined to deny someone consulting party status, the CRP should consult with the lead federal agency prior to making that determination. If a consulting party has been invited to concur in a MOA or PA and refuses, their refusal will not invalidate the agreement (36 CFR 800.6(c)(3)).

I. THE PUBLIC

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.

The opportunity for public involvement is provided throughout the Section 106 process (36 CFR 800.3 (e)) and under NEPA through the PennDOT project development process (see the *Project Level [Public Involvement Handbook - Publication 295](#)*). For projects with little potential to affect historic properties, the NEPA public involvement process can serve as the Section 106 public involvement process. Although a member of the public may raise questions or concerns at any time, public input will be deliberately 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 and consulting party concerns whenever feasible, the Section 106 process is consultative and may be completed without agreement from the public or consulting parties on historic preservation issues. 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 further detail in [*Chapter IV*](#).

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Chapter III. EARLY COORDINATION

A. PROJECT NOTIFICATIONS DURING PLANNING

PennDOT updated the project development process to better link planning and NEPA, a process now called “PennDOT Connects”. PennDOT Connects allows the consideration of environmental issues earlier in the planning process so that projects can be programmed with more accurate cost estimates, project schedules, and with more integration of community needs and goals (see *Design Manual 1A* [Publication 10B]). The *Fixing America’s Surface Transportation Act* (or FAST Act of 2015) requires input from various agencies and groups into the creation of the Transportation Improvement Plan (TIP). This is the first step in involving the public in, and understanding the public’s concerns regarding, the identification and protection of cultural resources. The public can have important information regarding properties in the area that can aid in the identification, and consideration, of cultural resources prior to the development of a project. Such information can lead to better outcomes for the avoidance of effects to, and even the enhancement of, historic properties. Further information on early coordination with the public, and involving the public in transportation projects, can be found in PennDOT’s Design Manual regarding the transportation project planning process (Design Manual, Part 1A).

B. TRIBAL NOTIFICATIONS DURING PLANNING

The Infrastructure Investment and Jobs Act (IIJA) requires Metropolitan Planning Organizations (MPOs) and Rural Planning Organizations (RPOs) to consult with State, Local and Tribal Governments to address concerns the governments have over land that falls under their jurisdiction within the state boundaries. In Pennsylvania, PennDOT, the USACE and FHWA, Pennsylvania Division, have identified 16 federally recognized Tribes and Nations whose ancestors had at one time lived in the lands of Pennsylvania. These 16 Tribes and Nations currently reside primarily in New York, Wisconsin, and Oklahoma (for further discussion on tribal consultation, see Chapter V).

There are a number of Presidential Executive Orders that address the special government-to-government relationship that agencies need to follow regarding Tribal Governments (EO 13084, and EO 13175). Also, the United States has signed treaties with these Tribes and Nations. Many of these treaties have included the recognition that these Tribes and Nations 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 the IIJA, the Tribes and Nations can be considered consulting parties. However, in keeping with the government-to-government relationship that PennDOT, the USACE, and

FHWA have established with the 16 federally recognized Tribes and Nations that we consult with, PennDOT believes consultation with Tribes and Nations should be at a higher level than just a consulting party in the planning process.

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

C. SCOPING

After the planning process identifies a project, it is assigned to the District Environmental Unit as part of the preliminary engineering process. One of the first steps in the environmental review process is a scoping field view. 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 help engineers/designers consider avoidance/minimization measures and plan realistic project schedules. 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** (see also Publication 10B [DM-1B]<https://www.pa.gov/content/dam/copapwp-pagov/en/pennDOT/documents/public/pubsforms/publications/pub-10/pub-10b/april%202022%20change%20no.%202.pdf>). 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 after the scoping field view will enable the CRPs to make informed and timely recommendations that will then be conveyed to the Project Manager and Environmental Manager:

1. Prior to the scoping field view, the Project Manager or Environmental Manager should provide the CRPs any information necessary to complete background research. This could include: MPMS number, project location or USGS map, project description, or any other relevant project-specific information known at that time.

2. The CRPs will identify known and mapped archaeological resources and surveyed above-ground properties within and adjacent to the project area using Pennsylvania's Historical and Archaeological Resource Exchange (PA-SHARE) and note their National Register status (e.g., listed, eligible, not eligible), if evaluated.
3. The District Architectural Historian will also search PA-SHARE for any unmapped above-ground properties within the project area and note their National Register status. The District Architectural Historian may need to conduct further research (including the review of photographs), or have that research conducted on their behalf, in order to identify the location of these properties within the study region.
4. The District Archaeologist should search PA-SHARE to determine the potential for pre-contact archaeological sites to exist within the project area using the predictive model layer.
5. The CRPs will check historic maps, soil maps, "As-Built" plans, or other available mapping in the District office and on online for additional background information.
6. The CRPs will work with the Environmental Manager to determine if they should attend the environmental and/or a separate scoping field view. Some projects, for example, can be exempted by a District Designee (DD) with no involvement by the CRPs (see Chapter IV for more information on exemptions), and some projects can be sufficiently reviewed from the desktop. The goal of the scoping field view is for the CRPs to: define a preliminary or projected area of potential effects (APE) based on information provided by the Project Manager or Environmental Manager; identify known and potential historic properties; determine potential for archaeological sites; and make recommendations on additional cultural resource studies. The scoping field view is also an opportunity for the Project Manager and Environmental Manager to consider and discuss all potential environmental impacts, including impacts to historic properties, and discuss possible avoidance or minimization measures. 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 or vague information may not allow the CRPs to adequately define the APE or make recommendations until the plans are more fully developed. It is advised that the preliminary APE be broad and narrowed as the project evolves. See **Section B** for more information on defining APEs.
7. After the scoping field view, the CRPs will take one of the following courses of action:
 - Determine a project exempt under [Chapter IV.C](#) as appropriate; and,

record the exemption in the CE Expert System, either on the Scoping Form, on Page B:A-4 of the CEE form, or the Environmental Document (ED) form for 100% state-funded projects, or in the Bridge and Roadway Programmatic Agreement (BRPA) Applicability Matrix or notify the Environmental Manager the project can be exempted if that is the preference of the District; or,

Note: Exemptions from the CE Expert System are populated daily into the PATH system; the exemption is publicly-accessible within 24 hours once it is inputted into the CE Expert System.

- Send the Project Manager and/or Environmental Manager (depending upon District preferences) a summary memo/email of the scoping field view and information needed to either exempt the project, determine what studies are needed, or to make a finding. This memo will become part of the project file. This documentation is sometimes referred to as a “buckslip.” If, after acquiring enough information from the Project Manager, the CRP determines the project can be exempted, the CRP shall make the exemption in accordance with Appendix A of the Section 106 PA. If the CRP determines a finding is required but studies will occur first, the CRP then completes a Project Early Notification/Scoping Results Form and posts it to PATH. 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 project’s cultural resources consultant(s) on the requested studies and as questions/issues arise during the development of the studies.
- If the CRP has enough information to determine that studies are needed, the CRP should complete a *Project Early Notification/Scoping Results Form* that discusses the presence of known and/or potentially eligible cultural resources and what additional studies are needed to identify historic properties or archaeological resources. The CRP may request the SHPO attend a scoping field view prior to or following the posting of the *Early Notification/Scoping Results Form* to acquire their opinion on level of effort for cultural resource studies; the CRP should be judicious in requesting the SHPO’s involvement, however, and only do so if there are no other appropriate means to attain the SHPO’s opinions. If the CRP is requesting the SHPO to participate in a scoping field view, the CRP should provide the SHPO with at least two weeks’ notice. The CRPs should indicate the anticipated level of public involvement, based on the project and its potential effects. The *Project Early*

Notification/Scoping Results Form will be made available to the SHPO, consulting parties, and the public through PATH.

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

The *Early Notification/Scoping Results Form* will be posted in PATH, along with a Project Location USGS Map, background research results, photographs of the project area, and any other information relevant to the SHPO and consulting parties. Where there are likely going to be effects to historic properties, this interim step is necessary to allow sufficient time for solicitation of potential consulting parties and for notifying tribes/nations of the potential to affect archaeological resources.

- Make a combined early notification and project effect finding using the *PennDOT Section 106 Effect Finding Form*. The combined early notification and effect finding may only be used when both above-ground and archaeology findings can be made without the need for further studies and consultation. If studies are going to occur or on-going consultation is needed, an *Early Notification/Scoping Results Form* should be prepared and posted ahead of a *PennDOT Section 106 Effect Finding Form*. If the CRPs prefer to make separate findings of effect, an *Early Notification/Scoping Results Form* should be used prior to the separate findings of effect.

1. SHPO Project Notification

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

For projects that are not anticipated to have effects (but are not exempt under Appendix A of the Section 106 PA), early notification to the SHPO is not required. In this case, the CRP may post a combined early notification and combined effect finding using the *Section 106 Effect Finding Form*. Notification of the Section 106 Finding will be provided to the SHPO prior to NEPA approval (see [Chapter VIII](#)) via PATH. An example of a project where effects are not anticipated but the CRP may elect to submit an Early Notification/Scoping Results Form (instead of combining it with an effect finding) is where the CRP wants the concurrence of the SHPO with level of effort for studies or additional studies are anticipated to determine potential effects.

In addition to informing the SHPO about a project, the *Project Early Notification/Scoping Results Form* enables the CRP to request a SHPO review number. A USGS map must be

attached to the *Project Early Notification/Scoping Results Form*. For EA and EIS projects, the SHPO may be initially notified of the project through an Agency Coordination Meeting (ACM), but more typically through PATH.

2. Exemption Notification to the Public

When projects are exempted from further Section 106 consideration, the individual exemptions are automatically posted in PATH within 24 hours of the notation in the CE Expert System. 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 annual reporting described in the Section 106 PA, under Stipulation III.A.3). It should be noted that, while most exemptions fall under 36CFR 800.3(a)(1) and are categorically excluded projects deemed to have “No potential to cause effects” and therefore, “the agency official has no further obligations under section 106 or this part”, the public may disagree with a particular finding or the potential of the project to cause effects. The project team should understand that the SHPO, and/or the public, may comment within 30 days of an exemption; any such comments should be considered even if the NEPA document was approved prior to 30 days from the exemption.

3. The National Park Service (NPS)

a. National Park Service Units

For any PennDOT undertaking within National Park Service lands, properties, or otherwise under NPS jurisdiction, PennDOT CRPs will coordinate those undertakings with the NPS Superintendent of those NPS Units (there are 18 NPS Units in Pennsylvania). Some NPS Units may also have in-house environmental and cultural resources staff who should also be included on any coordination. As previously noted, PennDOT cannot exempt any undertaking from Section 106 review if there is any NPS involvement whether that it is a National Historic Landmark (NHL) or an NPS Unit. For federal highway-funded projects, FHWA will assume lead agency responsibility for Section 106 undertakings. The NPS would be the lead agency for state-funded project.

b. National Historic Landmarks

The NPS should be notified of projects early in the project development process where the project has the potential to adversely affect a NHL. 36 CFR 800.10(c) requires that federal agencies notify the Secretary of the Interior of any consultation involving a NHL 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 regarding potential adverse effects to an NHL will involve the NPS’s Northeast Regional Office in Philadelphia. The NPS should be contacted via PATH at the e-mail address: nps_nhl_nereview@nps.gov. For federal-aid projects, FHWA must be notified of the undertaking prior to the CRP contacting the NPS.

c. Gettysburg Battlefield National Military Park and Battlefield Historic District

Additionally, any project in the Gettysburg Battlefield National Military Park and Battlefield Historic District must comply with Public Law 101-377, Section 4 ([16 USC 430g-7](#)), which requires any federally-funded or federally-assisted undertaking that takes place within the Park or Historic District to be consistent with the preservation purposes of each. The law requires the agency head responsible for the activity to “prepare a detailed analysis of any proposed action and submit it to the Secretary of the Interior” (Section 4(f)(2) of P.L. 101-377). For PennDOT projects, the CRP will coordinate with the NPS’s cultural resources specialist, or designated representative, who will then coordinate with the Chief of Resources and the Park Superintendent.

On federal highway-funded projects, the CRP must notify FHWA prior to sending any information to the NPS regarding projects within the Gettysburg Battlefield Historic District. On state-funded highway projects involving National Park Service property, the CRP should coordinate with that NPS field office to determine their participation as the lead federal agency.

4. Tribes and 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, if there is a potential to affect archaeological resources. Generally, in Pennsylvania the Tribes and Nations are interested in projects where there will be ground-disturbing activities in previously undisturbed areas, particularly if there is the potential to encounter burials. The District Archaeologist will determine which projects require tribal notification and which Tribes and Nations need to be notified. The District Archaeologist will contact the Tribes and Nations using the *Project Initial Tribal Notification Form*. The specifics of tribal consultation protocol are discussed in more detail in [Chapter V](#).

D. AREA OF POTENTIAL EFFECT (APE)

The area of potential effects (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” (see 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 provides an explanation of how the APE was selected.

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.

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. 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 in, the NRHP as well to allow for meaningful consultation with consulting parties and to consider avoidance or minimization efforts based on their concerns. 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, but not the State History Code, for the sake of consistency and operational simplicity the term is employed uniformly 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 the permit area (see [Chapter XI](#) for more information). PennDOT will delineate the permit area within the broader APE for purposes of coordination under the State History Code.

1. APE for Above-Ground Historic Properties

The project APE (per 36 CFR 800.16(d)) is often equivalent to the APE for above-ground historic properties since the archaeological APE is usually a smaller area where ground disturbance is likely to occur. 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. One of the outcomes of setting an APE is defining the area in which historic property eligibility and effect evaluations

will be conducted. It must be set in relation to the project, not in relation to the above-ground properties 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 **if the viewshed is or is likely** to be a contributing component to National Register eligibility. 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. Additionally, SHARE requires geographic coordinates in their system which must be furnished with an initial submission to SHARE. Consult the SHPO's [*Guidelines for Architectural Investigations in Pennsylvania \(updated 2014\)*](#) for further guidance on how to delineate an APE.

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 include potential staging and temporary construction areas and 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; this includes existing legal right-of-way and permanent easements.

Note: 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 SHPO. 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, and notes on the construction drawings and specifications, 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 Cultural Resources Section and the lead federal agency (as applicable).

Per FHWA policy (2005 Memorandum based on 1987 legal opinion of FHWA's Office of Chief Counsel, and 23 CFR 635.407), borrow and waste areas are not part of the APE unless these areas have been designated by PennDOT (see [Chapter VIII.C.5](#) for additional details).

3. APE Documentation

Documentation of the APE will normally be posted to PATH in conjunction with National Register eligibility documentation for properties in the APE. For large or complex projects, the CRP may wish to garner the input of the SHPO on the APE prior to conducting any studies; when submitting the APE as a separate submission, a project description and justification of the APE should accompany the map. CRPs should follow current SHPO office standards for electronic submission of APE documentation. Documentation of the APE should include a 7.5-minute USGS Topographic Map that includes the name of the Quadrangle and a delineation of the APE and/or 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.

4. Consultation with the SHPO on the APE

Under the terms of the Section 106 PA, certain projects are exempt from review by the SHPO (see [Chapter IV](#) and Appendix A of the Section 106 PA), and therefore documentation of the APE does not need to be submitted to the SHPO.

For projects not exempt from review under Appendix A of the Section 106 PA, the requirement to consult with the SHPO 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 the SHPO and comments must be solicited. For projects where a Categorical Exclusion (CE) or an Environmental Assessment (EA) under NEPA will be prepared, consultation with the SHPO 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 [Chapter VIII](#)). The timing of the posting or submission of the APE documentation to the SHPO 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 SHPO comments might require additional field surveys.

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

5. 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 the SHPO on the APE and they are anticipating Section 106/State History Code coordination with the SHPO in separate steps instead of through use of the PennDOT's *Section 106 Effect Finding Form*.

For projects requiring the preparation of an EIS, the CRP is required to consult with the SHPO 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.

a. Within an Identification and Evaluation Report

For non-exempt CE or EA level projects, the APE may be included with an Above Ground Determination of Eligibility Report and/or Archaeological Identification and Evaluation Report.

b. Within a Section 106 Field Assessments and Finding Form

For projects that cannot be exempted by the District Designee or CRP, but that do not require consultation with SHPO, the APE can be documented as part their finding documentation.

6. SHPO Concurrence on the APE

If the SHPO has not objected to, or commented on, the recommended APE within 30 days¹ of receipt, PennDOT will presume concurrence on the APE, and proceed to the identification stage of the process, consistent with 36 CFR 800.4(b). If the SHPO objects to the APE, the District Archaeologist or Architectural Historian will consult with the SHPO, 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.

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

Chapter IV. EXEMPTIONS

Under the Section 106 PA, certain projects may be exempted from further Section 106 review. Pursuant to the Section 106 PA, fully (100%) state-funded projects with a U.S. Army Corps of Engineers (USACE) permit follow the same process. Under the terms of the History Code MOU with the PHMC, state-funded (or state and locally funded) projects without a USACE permit also 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 State Historic Preservation Office (SHPO). 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 only CRPs to exempt certain projects from further Section 106 review, including select bridge replacement projects, subject to certain conditions. Appendix A 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 A 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.2 of the Section 106 PA). The DD should 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 A of the Section 106 PA must meet all the following conditions 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 A of the Section 106 PA.

The project cannot contain activities other than those specified in Appendix A 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 (NHL) 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 and/or new permanent easement at its widest point, on each side of the road, rail bed, existing trail, or pedestrian facility.

C. PROJECTS EXEMPTED BY DISTRICT DESIGNEE OR CRP

Appendix A of the Section 106 PA contains a list of exempt activities. Please note that the list is divided into Level 1 and Level 2 Activities. Level 1 Activities may be exempted by the DD or CRP, while Level 2 Activities may only be exempted by the CRP. An annotated list of exempt activities, with further explanation of each activity, the intent of the activity, and the limitations of the activity, follows the activity list. In keeping with the intent of the Section 106 PA, exemptions made under Appendix A conclude the Section 106 process.

PennDOT DDs and/or CRPs may review and exempt undertakings from further review, provided that the undertakings meet all the criteria below, and are limited to the activities listed under Level 1 and Level 2. DDs may only review Level 1 project activities. If a District lacks a Designee, or at the preference of a District, the CRPs will review Level 1 activities. Level 2

project activities may only be reviewed and exempted by the CRPs. The following activities (both the Level 1 and Level 2 activities) are excerpted directly from Appendix A:

1. Level 1 Activities

Projects Exempted by District Designee or CRP

- 1) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange
 - a) Reconstruction of the existing roadbed (including existing shoulders), provided in-kind or compatible modern materials are used. Reconstruction may include but is not limited to: resurfacing; restoration; rehabilitation; surface treatments; milling and grooving; installation of new drainage pipes within the roadbed. This includes all pavement preservation, maintenance betterments and roadway rehabilitation activities under Stipulation 1 of the Programmatic Agreement between FHWA and PennDOT for Bridge, Roadway and Non-Complex Projects (BRPA). This also includes installation of pavement markings (both normal and raised) and snow and ice detectors.
 - b) Creation of turning lanes or crossovers within the existing roadbed or disturbed median.
 - c) Removal or replacement of existing guiderail.
 - 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 for listing on the National Register of Historic Places.
 - e) Installation of new, or replacement of, median barriers or median guiderail.
 - f) Activities within existing disturbed highway interchanges.
- 2) Rehabilitation of existing at-grade railroad crossings provided there is no change in grade.
- 3) Drainage improvements, including installation, replacement or rehabilitation, and cleaning activities associated with existing drains, dikes, headwalls, culverts with an opening 8 feet or less in width, pipes and storm sewers.
- 4) Bridge Projects

Rehabilitation or preservation of bridges (including culverts over 8 feet), that are less than 50 years old, previously determined not individually eligible, or categorically not individually eligible pursuant to Stipulation II D of the Statewide FHWA and USACE delegation programmatic agreement (Delegation PA). This includes all preservation activities under Part B, Stipulation 2 of the BRPA and all bridge rehabilitation activities under Part B, Stipulation 1 of this agreement (activities 2 through 10) except for activity 2 as it relates to the replacement of bridge parapets and activity 9 as it relates to bridge beautification activities. Bridge rehabilitation projects involving the replacement of parapets

on bridges that are over 50 years old, regardless of the individual eligibility status of the bridge, must be reviewed by the District CRP and may only be exempted by the CRP. Bridge beautification activities must be reviewed by the District CRP. In-kind bridge curb and gutter replacement activities, however, are exempt activities.

- 5) Minor widening or minor changes in alignment provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible, and there are no known archaeological sites within the project area of potential effects (APE), as determined from PA-SHARE, or visible evidence on the ground surface in the APE.
- 6) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances
 - a) Installation or upgrade of regulatory signs, and railroad warning signs and devices; or upgrade of advisory signs.
 - b) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers and/or noise walls. Exception: when in an urban (non- rural) area, the area must have been previously determined to be ineligible as a historic district.
 - c) Installation of new lighting, fencing, retaining walls, traffic signals, advisory signs, barriers and/or noise walls, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible.
 - d) Installation or replacement of Intelligent Transportation System (ITS) cameras and devices, and electronic advisory signs, including Dynamic Variable Message Sign structures.
- 7) Sidewalks and Curbing
 - a) Replacement of concrete curbing and sidewalks.
 - b) Installation of new sidewalks and/or curbing, and/or bulb-outs, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible.
 - c) Construction of sidewalk improvements in the form of drainage cuts or curb cuts made under the American Disabilities Act and guidance in PennDOT Design Manual 2 Publication 13M), provided that there is not a NR eligible or listed historic district present.
- 8) Transportation Enhancement/Safe Routes to School Projects
 - a) Streetscape improvement activities limited to planting of trees and installation of non-permanent amenities such as bike racks, trash receptacles, and benches.
 - 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 PA-SHARE system, 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. Replacement of existing gabion baskets can be used under this exemption where 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 NR eligible. This exemption does not include placement of new gabion baskets where gabion baskets did not exist.
- 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 PA-SHARE (see [Appendix 3](#)).
- 15) Clean-up and restoration of roadway to pre-existing conditions for hillside slumps and slides; slope stabilization activities within existing right-of-way.

2. Level 2 Activities

Projects Exempted by the Cultural Resource Professional

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

The CRP exemptions will be based upon a scoping field view and/or video log review and/or background research (including, but not limited to, PA-SHARE information, and historic maps).

- 1) Bridge Replacement/Removal Projects

The District CRP may review and exempt bridge replacement projects (including culverts over 8 ft.) provided that:

- a) The structure is less than 50 years old, the structure is categorically not NR eligible per Stipulation II.D, or previously determined not NR eligible and remains not eligible in the documented opinion of the CRP;
- b) The structure is being replaced on existing alignment;
- c) All standing structures within the project APE are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible and remain not NR eligible in the opinion of the CRP, or all properties over 50 years old are not NR eligible in the opinion of the CRP, and the project is not within, or immediately adjacent to, a NR eligible, or potentially NR eligible, historic district;
- d) There are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE; and
- e) The District CRP for Archaeology has determined that any temporary construction easements associated with the project have been previously disturbed. If any temporary construction easement is determined to have a high probability for archaeological sites, and geotextile and fill will be used as a protective measure in lieu of archaeological testing, the exemption cannot be applied. The CRP must follow the procedures in Appendix B of the Delegation PA for application of the standard treatment.

2) Bridge Rehabilitation or Preservation Projects

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

- 3) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange Installation of new guiderail, provided that any structures over 50 years old in the APE are not eligible in the opinion of the CRP.
- 4) Minor widening or minor changes in alignment provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP and there are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE.
- 5) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances

- a) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls in an historic district, and/or where other historic properties are present in the APE, provided that the upgrade or replacement is in-kind in general appearance.
 - b) Upgrade or replacement of over 50-year-old lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls provided, in the opinion of the CRP, the elements being upgraded/replaced are not individually eligible and there is neither an historic district nor other historic properties in the APE.
 - c) Installation of new lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls, as well as new advisory signs, provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
- 6) Sidewalks and Curbing
- a) Installation of new sidewalks and/or curbing, and/or bulb-outs provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
 - b) Construction of sidewalk improvements in the form of drainage cuts or curb cuts made under the American Disabilities Act and guidance in PennDOT Design Manual 2 Publication 13M), provided that the curb cuts are determined to have no effect on any eligible or listed historic district or other NR eligible or listed property in the APE.
- 7) Stream stabilization and restoration activities involving the replacement of, or placement of new (not previously in place), gabion baskets where all standing structures in the APE are not NR eligible in the opinion of the CRP.
- 8) Appendix A activities of the Federal Railroad Administration Section 106 Program Comment for Rail Rights-of-Way. This includes, but is not limited to, Activity B.8: “Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction”. This also includes Activity E.5: “in-kind rehabilitation or replacement of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses). This does not include modifications to existing grade separating structures (e.g., bridges, overpasses) that would result in a substantial increase in height or overall massing or substantial change in appearance. Replacements must be substantially the same appearance and size as existing.”
- 9) Emergency Activities involving repair to existing infrastructure and other activities necessary to restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices.

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 or Environmental Document (ED) 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 need 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. PATH has a reporting feature, available to the public, which creates a report of exemptions by District and by a defined time period. Exemptions involving historic bridges made under Appendix A, Section B are also included in this report. Exemptions posted on PATH are pulled from the CE Expert System as the exemptions are made and prior to the NEPA approval.

Once the exemption is made, the Section 106 process is complete, 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 various 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

NOTE: If the project changes in preliminary design the CRP must be informed. If the exemption(s) no longer applies/apply, or are different, the CRP needs to manually make changes in PATH to override the exemption with an effect finding.

recorded in ECMTS so that they are relayed to the contractor and followed as the contractor completes the plans.

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Chapter 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) and the U.S. Army Corps of Engineers (USACE) are required to make a reasonable and good faith effort to identify and consult with federally recognized Tribes and Nations that may attach religious and cultural significance to historic properties affected by federal highway-aid projects. As noted in [Chapter II](#), federal agencies are also legally required to consult with Tribes and Nations under other laws and regulations. Historic properties of importance to Tribes and Nations may be located on ancestral, aboriginal, or ceded lands within the Commonwealth of Pennsylvania. PennDOT, the USACE and FHWA, PA Division, have identified 16 federally recognized Tribes and Nations that are likely to have an interest in Pennsylvania projects because of ancestral ties to the state. Each federally recognized Tribe and Nation is sovereign. Therefore, FHWA or USACE as part of the federal government engages in government-to-government relations with the Tribes and Nations. As has been demonstrated in other states, developing a good working relationship with Tribes and Nations takes time. FHWA and PennDOT have worked on specific protocols, or understandings, with each of the Tribes and Nations. Federal recognition of Tribes and Nations is a key component of 36 CFR 800. Federally recognized Tribes and 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 federally recognized sovereign Tribal lands. Non-federally recognized Tribes and Nations, including those recognized at the state level outside of the Commonwealth of Pennsylvania (Pennsylvania has no state-recognized Tribes or Nations) may participate in the Section 106 process with status equivalent to other consulting parties. These individuals or organizations must have a demonstrated interest in a project and must send a written request to FHWA or USACE 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.)

The purpose of consultation with the Tribes and Nations 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 or cultural significance to tribes/nations, the Tribes and Nations bring a unique and added perspective to the consultation process. When Tribes and Nations are provided with a reasonable opportunity to provide advice on the identification and evaluation of such properties, when Tribes and Nations articulate views on the project's effects on such properties, and when Tribes and Nations participate in the resolution of adverse effects to such properties, the decisions and results will result in better consultation and more informed decision-making by all parties.

B. FEDERALLY RECOGNIZED TRIBES AND NATIONS

PennDOT routinely consults with 16 federally recognized Tribes and Nations across the country, listed below.

Name	Location
Absentee-Shawnee Tribe of Indians of Oklahoma	Shawnee, OK
Cayuga Nation	Seneca Falls, NY
Delaware Nation, Oklahoma	Anadarko, OK
Delaware Tribe of Indians	Bartlesville, OK
Eastern Shawnee Tribe of Oklahoma	Seneca, MO
Oneida Indian Nation	Oneida, NY
Oneida Nation	Oneida, WI
Onondaga Nation	Nedrow, NY
Pamunkey Indian Tribe	King William, VA
Saint Regis Mohawk Tribe	Akwesasne, NY
Seneca Nation of Indians	Salamanca, NY
Seneca-Cayuga Nation	Grove, OK
Shawnee Tribe	Miami, OK
Stockbridge-Munsee Community, Wisconsin	Bowler, WI
Tonawanda Band of Seneca	Basom, NY
Tuscarora Nation	Lewiston, NY

C. SPECIFIC GUIDANCE

FHWA and the USACE have delegated to PennDOT, with the consent of the 16 aforementioned Tribes and Nations, Section 106 consultation with the Tribes and Nations. PennDOT is responsible for initiating consultation with Tribes and Nations on a project-specific basis, transmitting documentation and information to the Tribes and Nations, and determining a Tribe's and Nation's level of interest in a project.

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

Protocol for initiating consultation begins when a PennDOT District Archaeologist requests an archaeological investigation, typically during or immediately after a scoping field view or initiation of a project. The archaeological investigation should not begin earlier than 30 days after the initiation of consultation with tribes/nations that have historic interest in a given project area to allow adequate time for the Tribes and Nations to respond with any potential concerns that they may have.

1. What Information to Send to and Solicit from the Tribes and Nations

The District Archaeologist is responsible for transmitting information and documentation to, and soliciting information from, the Tribes and Nations. All projects where archaeological fieldwork is to be conducted, including Phase I, II, or Phase III investigations, must provide advance notification to federally recognized Tribes and Nations at least 30 days prior to commencement of fieldwork. Where tribes are notified by letter instead of e-mail, time needs to be added in to make sure receipt of the letter by the tribe is at least 30 days prior to fieldwork. It should be noted that information shared by the Tribes and Nations must remain confidential if the Tribe/Nation has so requested.

Two forms have been developed to facilitate that coordination: a *Project Initial Tribal Notification Form* and a *Project Information Form*. Both forms are auto-populated in PATH. 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 and Nations and indicates project status. Archaeology reports, summaries, or other relevant documentation should be attached. Notification is sent via e-mail and for those Tribes and Nations that have agreed to receive information in electronic format. For those Tribes and Nations that prefer paper documents, PATH can generate a printable version of the forms. It is the responsibility of PennDOT and the lead federal agency to consult with each Tribe/Nation

NOTE: Consultants have not been authorized to consult with Tribes and Nations. Consultants working on behalf of the Department as qualified CRPs, *however*, do have the authority to consult with tribes.

over whether an all-electronic submission system is acceptable or to determine which still prefer paper documentation.

2. Continuing Consultation

Once a Tribe/Nation has received notification of a project, the District Archaeologist will continue to transmit and solicit relevant information either via PATH or by mail to the Tribe/Nation, until the Tribe/Nation directs otherwise. Tribes and 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. If a Tribe/Nation does not respond to the initial notification, this should not be interpreted as disinterest on their part. Workload and tribal priorities may prevent a Tribe and Nation from responding in a timely manner. Other times, they may respond that they are only interested in projects when a significant archaeological site or a burial is found.

Informal consultation, including telephone conversations, on-site meetings, and e-mail is to be encouraged and should be documented in the project file and, where appropriate to PATH. Each consulting Tribe and Nation should receive a copy of any documentation produced at critical decision points. Each document transmittal must have the *PennDOT Project Information Form* and should contain a brief synopsis of the material being transmitted.

As consulting parties with a unique status, Tribes and Nations are to be given the opportunity to participate in the resolution of adverse effects. Archaeological reports, data recovery, or alternative mitigation plans should be sent to consulting Tribes and Nations for concurrence when they are also submitted to the State Historic Preservation Office (SHPO). Tribes and Nations may sign a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA), although they are not required to do so. A note should be placed in the project file noting when a Tribe/Nation has declined to sign a MOA or PA. When a draft MOA or PA is submitted to the

SHPO for concurrence, the Tribes and Nations who have expressed interest in the project must also receive a copy concurrently.

3. Burials and Sacred Objects

The discovery of sacred burials or objects is likely to be of most concern to the Tribes and Nations. If the District Archaeologist has determined that there is a high potential for burials at an archaeological site, that person shall so inform the Tribes and Nations and the lead federal agency. If burials are found during any stage of archaeological investigations or during construction (see [Chapter XIII](#)), the District Archaeologist will immediately contact the county coroner, Bureau of Design and Delivery, Cultural Resources Section and the lead federal agency. The lead federal agency will notify all Tribes and Nations within whose geographic area of interest the burial is located, even if the Tribes and Nations previously did not express interest in the project. The lead federal agency and PennDOT will consult with the Tribes and Nations to seek an equitable solution for the treatment of the burials that takes into consideration both the views of the Tribes and Nations and the SHPO. 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 lands and sovereign Tribal lands as identified by the federal government. Because FHWA does not own land, and there are no federally recognized sovereign Tribal lands in Pennsylvania, NAGPRA does not specifically apply to federal highway-aid or permitted projects unless the discovery is on land owned by a federal agency such as the USACE or National Park Service. However, it is the intent of FHWA and the USACE 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 or Nation, the lead federal agency will consult with the respective Tribes and Nations and the Advisory Council on Historic Preservation (ACHP). See [Chapters V](#) and [XIII](#) for procedures regarding anticipated and unanticipated discovery of Native American burials.

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Chapter 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 via 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)]. The federal agency must be proactive in locating persons or groups interested in the effects of a project on historic properties. The public may become involved in the project informally, by providing comments at public meetings, or through emails and phone calls. 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 without a permit from the U.S. Army Corps of Engineers (USACE) reviewed under the Memorandum of Understanding (MOU) with the State Historic Preservation Office (SHPO).

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 decision-making 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 decision-making.

(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 (ACHP) 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.

As part of the Section 106 process, the lead federal agency and PennDOT work with consulting parties. Consultation does not require a specific forum, nor does it mandate a specific outcome. It is the process of seeking views on the project's effects to eligible historic properties and, if the effects are adverse, how they should be resolved. If there are a number of people and/or groups participating as consulting parties, an in-person meeting specifically with consulting parties may be warranted. Depending upon the complexity of the project, more than one consulting party meeting may be needed. The following tables define the roles and responsibilities of the public versus consulting parties under the Section 106 PA. 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/USACE finding that a project has an effect on historic property within 30 days of notice	•	•
Provide comment on how a project would avoid, minimize, or mitigate adverse effects to a historic property	•	•
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 or Programmatic Agreement		•
Object to a PennDOT finding within 30 days of a finding, and potentially have the ability to elevate the objection to the lead federal agency, 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 familiar with the Section 106 process.
2. Become involved early in project development.
3. Provide information about historic properties in the project area of potential effects.
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.

The lead federal agency and PennDOT have a right to:

1. Use existing public involvement procedures under the National Environmental Policy Act (NEPA).
2. Scale the efforts to seek public involvement to the likely interest of the public, the complexity of the project and the likely effects to historic resources.
3. Make the final determination on all requests for formal consulting party status.
4. Make the final determination on a project's effects to historic resources.
5. Proceed to the next Section 106 step in the process if the SHPO or other consulting parties fail to respond to a request for comment on a determination or finding in a reasonable timeframe.
6. Elevate an objection to the Advisory Council on Historic Preservation or the National Register of Historic Places, as appropriate.
7. Terminate consultation when it becomes clear to the lead federal agency and PennDOT that agreement cannot be reached.

Responsibilities of the lead federal agency and PennDOT to consulting parties and the public:

	Public (Individuals, Groups, Organizations)	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 and reasonable comment deadlines where appropriate	●	●
Provide findings of effect and supporting documentation	●	●
Invite input and 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 the lead federal agency 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 or Programmatic Agreement, where appropriate		●
Have PennDOT work to resolve a (consulting party) objection to a finding, and, if necessary, involve the lead federal agency in attempting to resolve the objection		●

B. PUBLIC INVOLVEMENT USING THE PATH SYSTEM

The Pennsylvania Transportation and Heritage (PATH) web database has several purposes.

- It disseminates information to the public about planned projects on the State Transportation Improvement Plan (STIP) and about Section 106 steps for projects in design.
- It is a tool for soliciting interested historic preservation groups for potential consulting parties.
- It directs comments and reactions from consulting parties and the public to the appropriate representatives (cultural resources professionals) at PennDOT and the lead federal agency.
- It educates both the public and the transportation community on processes, programs, and best practices in transportation and preservation.

Although PATH can be an effective tool to advance consultation on Section 106 issues, PATH is not a substitute for consultation. Consultation is, at heart, a conversation. PATH is a tool useful for soliciting consulting parties (in many cases), notification, for sharing information, and for documenting comments and decisions. **PATH is not a substitute for real and engaged consultation.** 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.

PATH addresses its mission through several 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).

To learn more about how the system functions, visit the [PATH/About](#) webpage.

C. EARLY INVOLVEMENT

Early public involvement is mandated in the planning and programming stage of [PennDOT Connects](#). This ensures that the public has adequate opportunity to provide input and present their views. PennDOT has developed policy which implements these provisions in Design Manual 1A (Publication 10A).

In preliminary design, early coordination efforts 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*. The potential to affect historic properties will trigger additional efforts in seeking consulting parties and views of the public. 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 (see [Chapter IV on Exempt Projects](#)), PATH is used to manage the solicitation of consulting parties and public involvement. Whether PennDOT solicits for consulting parties depends on whether the project is likely to have an effect on historic resources. The point at which PennDOT would solicit depends on the quality of the historic property inventory information available at the time of scoping.

If scoping determines that a project has known historic resources, and if the CRP expects the project will have an effect, then the CRP will solicit consulting parties. The solicitation can be made by posting an *Project Early Notification/Scoping Results Form* if effects are undetermined or if the CRP calls for an inventory based on the possibility of historic or archaeological properties in the APE. If the CRP is ready to make a finding of effect, a *PennDOT Section 106*

Effects Finding Form will be posted on PATH. In order to give interested consulting 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 PATH requires two coordinated actions. Notifications to known concerned parties must be sent. In addition, the notifications must clearly indicate that this is a solicitation for consulting parties, and not simply informational.

The presence of historic properties within a project APE does not automatically require solicitation of consulting parties. Projects that have no effect on historic properties do not require solicitation of consulting parties.

Notifications to statewide organizations 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 indicate that there will be an opportunity to comment on cultural resources if there is a possibility of project effects to those resources. Depending on the level of project complexity, public input, as well as input from local officials, on cultural resources can be gathered during a municipal meeting.
2. Property owners can become consulting parties upon request. They should be solicited throughout the process beginning with the scoping field view and continuing with identification of the APE, through resolution of adverse effects. Notice of Intent to Enter letters may indicate that there will be an opportunity to comment on cultural resources. If historic properties are likely to be affected by the project, the owners should be offered the opportunity to apply to become consulting parties. Information and views provided by these property owners should be documented within the project's Technical Files and in cultural resource reports. The information and views also should be considered during the development of the project. Those comments will become part of the project documentation. An opportunity to become a consulting party can be given to affected historic property owners through personal contact at a field view or at a public meeting, through a Notice of Intent to Enter letter, or by contacting 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 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 Design and 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 PATH)
- A form for potential consulting parties to fill out for PennDOT and the SHPO 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

NOTE: There is a difference between notifications that simply provide information and notifications that ask the recipient for a response. Solicitations for consulting parties should clearly indicate the intent and request a response.

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 presume a 30-day comment period (36 CFR 800.6).

If a project is likely to affect historic properties, PennDOT's request for public input on cultural resource issues should be highlighted in public meeting notices and should be discussed at public meetings. It is generally sufficient to provide information on the Section 106 consultation process and known historic properties in the APE at normally scheduled project public meetings. 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

NOTE: The SHPO 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.

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.

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 to historic properties in writing [by letter, project website (if applicable), or email]. The CRP should consult with the Environmental Manager (EM) or Project Manager (PM) about any comments that are not related to Section 106 and will also notify the commentor that their comment(s) will be shared with the PM or EM for consideration and/or response, as appropriate. 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 comments in writing for the specific comment to be considered. These views should be documented in the project Effect Report and/or the effect finding and posted to PATH. All comments should be considered as part of project development and in the assessment and resolution of effects for Section 106/the State History Code.

Information on eligibility ([Chapter VII](#)) and effects ([Chapter VIII](#)) assessments should be submitted concurrently to the SHPO and consulting parties unless otherwise agreed to by FHWA or the USACE, PennDOT, and the SHPO. Note that reports with sensitive information on archaeological sites will be provided to qualified consulting parties on a need-to-know basis. Any comments from consulting parties and the public will be available for public review on PATH (unless it contains sensitive information and/or commenter requests confidentiality and PennDOT and the lead federal agency agree). The comments must be made available to FHWA (or the USACE, as appropriate). In addition to documenting other mitigation measures or alternatives, documentation on consultation on project effects must include evidence of the opinion of the SHPO, and when given, the opinions of all consulting parties and the public.

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Chapter 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 significant above-ground historic properties (i.e., properties eligible for listing in the National Register of Historic Places [NRHP]) within an area of potential effects (APE) that could be affected by project undertakings. Above ground historic property identification and evaluation will be completed in accordance with the Secretary of the Interior's [Standards and Guidelines for Archaeology and Historic Preservation](#); National Register Bulletin 15: [How to Apply the National Register Criteria for Evaluation](#) (revised 1995); and relevant guidance from the SHPO at <https://www.phmc.pa.gov/Preservation/About/Pages/Forms-Guidance.aspx>. 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”. The District Architectural Historian may consult with the Cultural Resources Section Manager, the lead federal agency, and/or the SHPO in determining the level of effort.

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.A](#)).
- d. During the field view the District Architectural Historian should determine at least a preliminary APE (see [Chapter III.B](#)), assess whether the project is an exempt activity (see [Chapter IV](#)), and, if not, should determine the level of identification effort needed (or the project information necessary to determine the level of identification effort needed). During the scoping field view, and/or following the field view, the District Architectural Historian should determine whether detailed background research, a reconnaissance survey, and/or topical historic contexts for the APE are needed (i.e., an historic context report). The District Architectural Historian should also consider whether an Historic Resource Survey record (HRS) is required (which is entered into PA-SHARE) 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 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 National Register eligibility evaluations. All projects requiring environmental review, excluding most 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 above-ground properties within the APE have been determined eligible or not eligible, are listed in the NRHP, and/or were previously surveyed but no determination was made. Generally, this information can be obtained electronically utilizing the PA-SHARE system. This research should also entail use of historic maps and historic aerial photographs to determine whether there are any historic properties in the APE, prior to conducting a field view. The District Architectural Historian will generally complete this level of research. Overview level research should be completed prior to the scoping field view.

b. Detailed Research

This entails more intensive background research. 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 and aerials
- 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 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 working on behalf of, and in conjunction with, 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. The District Architectural Historian should also work with the SHPO, giving consideration to their preferences for creation of property records in PA-SHARE. 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, 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. Eligibility evaluations should be conducted on properties over 50 years that remain in the refined APE that were not evaluated within the last 5 years; the District Architectural Historian will determine which properties warrant evaluation with a HRS record; the SHPO may be consulted in this determination or may opine on level of effort with the submission of eligibility findings. 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, or properties evaluated over 5 years ago, 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 development of HRS records on properties and/or determine if properties should be eliminated from further evaluation 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.d* 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, particularly National Register Bulletin 15: [How to Apply the National Register Criteria for Evaluation](#), and guidance from the SHPO, all properties to be assessed for NRHP eligibility must be evaluated within their historic context. Historic contexts organize information based upon themes within specific geographical and chronological

confines, in order to assist in identifying the important characteristics of resources in the area and explain why the resource is important.

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 the SHPO 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 HRS record for each property with reference to appropriate prior studies/existing statewide contexts. 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 SHPO 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, using the results to determine property types and what properties in the area may be locally, statewide, or nationally significant. 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. (See the [SHPO's website](#) for further information on historic contexts.)

<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. The context must also 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 specifically 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 minimal HRS records 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 SHPO or consulting parties. (See [Chapter XII](#) for a checklist of report requirements.)

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

a. Historic Resource Survey Data Entry Record

The SHPO maintains information, usually in the form of HRS records, of over 100,000 above-ground properties. This information is available in PA-SHARE. It is up to the discretion of the District Architectural Historian to determine when, or whether, a full HRS record, or what the SHPO refers to as an “Identification Level” record, should be used. (Additional information on the use of the Identification Level HRS is found in *Section B.e.v* below) At a minimum, HRS records must be completed for any historic property that could be adversely affected unless a HRS record has been completed previously. If the property was evaluated more than five years

ago, an updated record or updated information may be necessary (See *Section A.f* below regarding scope of identification efforts).

The HRS is the method by which properties in Pennsylvania are formally evaluated for their eligibility to be listed in the NRHP. Under Section 106, as well as the State History Code, properties that are eligible for the NRHP receive the same consideration as properties that are listed. The NRHP inventory is synonymous with the “Pennsylvania Register of Historic Places,”

NOTE: NRHP Criteria are as follows:

Criterion A: Event. 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.

which is referenced in the State History Code.

If a 50 year old or older property in the APE can be associated with one or more thematic, historic contexts with established registration requirements, and the property retains historic

integrity, the NRHP evaluation must clearly evaluate the property according to the registration requirement(s); this is regardless of whether a HRS record is produced for the property. Sufficient information must be gathered on any 50 year old or older property in the project APE that appears to retain integrity, and may be affected by the project, to determine whether the property being evaluated possesses 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 in the HRS.

It is important to note that Criterion D should be considered for every property that may be potentially affected, 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 and based on the level of ground disturbing activities within the property.

(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.

For barns, evaluating the interior layout can be particularly helpful in understanding the use and changes to use of the barn and the farm. CRPs, and consultants acting on PennDOT's behalf, are encouraged to view and evaluate the interiors of barns with property owner permission, particularly in cases where the barn may be adversely affected by the project.

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. Individual property HRS records 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, through a shared historic context (e.g., a group of houses built about the same time), 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, the SHPO 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 as well as the documentation requirements of PA-SHARE. Identification Level records should be completed for any contributing property where the features that help it contribute to the significance and/or integrity of the historic district may be affected by the project. 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* on pages 3-8 through 3-10, for more information.)

Completion of full boundary descriptions, justifications, and maps for eligible historic districts may not be necessary for purposes of the project but the requirements of PA-SHARE must be met. The level of effort for historic district identification and delineation will be at the discretion of the District Architectural Historian working in concert with the SHPO on delineation of boundaries, particularly for rural historic landscapes.

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

The 1961 [Historic District Act](#) (Act 167), 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. A 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 the SHPO 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 collaborative planning principles of “PennDOT Connects” (more information on PennDOT Connects can be found [here](#)) 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 the SHPO’s publication [Historic District Designation in Pennsylvania](#).

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 Inventory and Evaluation (2001): PennDOT completed a comprehensive historic bridge inventory and evaluation in 2001. The 1996-2001 historic bridge inventory considered all bridges with a waterway opening of 21 feet or greater carrying a public highway/road, or under which a public highway/road passes (i.e., all bridges built in 1956 or earlier that were in BMS in 1996). Bridges that were listed in the National Register prior to 1996 were not re-evaluated in the statewide inventory. The inventory focused on individual National Register eligibility and the degree to which a bridge was present within, and contributing components of, existing historic districts.

Bridge Inventory Updates and/or Reevaluations: Beginning in 2017, PennDOT, in conjunction with the SHPO, began conducting updates to the 2001 inventory by bridge type and design. As with the 2001 inventory, the focus of the updated evaluations was on individual eligibility for the National Register. The updates to date have involved a point system focused on significance and integrity. The results of these updates have been incorporated into PA-SHARE. The methodologies (including explanation of the points system utilized to evaluate the bridges) and results of these inventories can be found on the Cultural Resources Section website.

Per agreement of the SHPO, PennDOT and FHWA, the following concrete bridge types were

NOTE: PennDOT had maintained an MS Access database for the original historic bridge inventory, but that has become obsolete and should not be relied upon for current National Register findings. The results of the 2001 statewide inventory and all inventory updates to date have been incorporated into PA-SHARE, which feeds the National Register eligibility field in BMS2. This information is now also in PennDOT's OneMap system as well.

determined to not benefit by a reevaluation and the determinations from 2001 (as captured in PA-SHARE) will remain the individual eligibility determinations: t-beams, encased steel stringers, channel beams, rigid frames. PennDOT continues to work with the SHPO office to reevaluate other bridge types and designs; as the work is completed PA-SHARE and the Cultural Resources website will be updated.

Advisory Council on Historic Preservation Program Comment for Common Post-1945 Concrete and Steel Bridges: PennDOT and the FHWA follow the [2012 Program Comment for Common Post-1945 Concrete and Steel Bridges](#). Pennsylvania has only one bridge that is listed as an “exception to the exemption” and that is the Spring Garden Street Bridge over the Schuylkill River in Philadelphia.

The District Architectural Historian is responsible for evaluating other bridges not covered by the Program Comment built since 1956 or otherwise not previously evaluated through an HRS.

Bridges Contributing to Historic Districts: The District Architectural Historian, pursuant to the Section 106 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, as well as rural or urban historic districts. In general, bridges that date to the period of significance, possess characteristics that contribute to the significance of the district, and that have sufficient integrity, would be considered contributing. A sufficient understanding of the character defining features of the historic district is necessary to establish whether a bridge relates to the significance of the historic district. The District Architectural Historian should evaluate culverts and small bridges as to whether they contribute to the district or should be considered small scale features that would not be “countable”, and therefore would not be considered contributing. (See the National Register Bulletin *How to Complete the National Register Registration Form*, particularly pages 16-17, for more information on counting resources.) According to National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*, a bridge (or other property dating to the period of significance) cannot contribute if substantially altered since the district’s period of significance or if it does not share the historic association of the district.

NOTE: Stipulation II.D.1 of the Section 106 PA relates only to individual NRHP eligibility. It is the responsibility of the CRP to determine whether a bridge contributes to an historic district (either an existing historic district or one potentially eligible.)

Bridges Less Than 21 feet: Pursuant to Stipulation II.D.1 of the Section 106 PA, the signatories to the Section 106 PA agreed that most bridges less than 21 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 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, pre-stressed, 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.

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.e.iii*** 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. Identification Level HRS Records

Identification Level HRS records (known previously as “abbreviated records”, or “abbreviated forms”, and sometimes “short forms”) may be used for above-ground properties that are clearly not eligible, 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 Identification Level HRS records are needed for any properties within the APE. In general, identification Level HRS records are typically unnecessary, since, under the terms of the Section 106 PA, HRS records, including Identification Level HRS records, are not required for properties that are not eligible. However, for an over-50-year-old property that may be demolished, or otherwise negatively affected, such as through demolition, PennDOT has supported provision of an Identification Level record to document the properties existence prior to the impacting action.

For properties that fall under a multi-property documentation form (MPDF) or statewide context with registration requirements, such as farms and farmsteads, Identification Level records should clearly indicate where a property does not meet minimum registration requirements. If a farm meets minimum registration requirements for one or more periods, it may be difficult to utilize an Identification Level record, even if it’s clearly lacking in overall integrity and/or significance. If a farm does not have the required outbuildings for any farming period, the identification Level HRS should explain that and indicate if that is the reason an historic narrative, which includes information like census records, was not completed. An historic narrative is not required for Identification Level HRSs for farms/farmsteads 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 not to require completion of a HRS (whether Identification Level or full record) for a farm if the farm is clearly not eligible and/or will not be affected. Further guidance on evaluating farms, farmsteads and agricultural historic districts can be found in the SHPO’s website on the agricultural history project: <http://www.phmc.state.pa.us/portal/communities/agriculture/>.

For any property submitted to the SHPO for review as an Identification Level HRS record, more information may be requested by the SHPO up to and including a full HRS Record. If the District Architectural Historian questions the need for more information, they should consult

with the Department's Senior Architectural Historian if they do not reach agreement with the SHPO on level of effort for documentation; the lead federal agency may also be consulted. All Identification Level HRS records must include a photo of the subject property and a US Geological Survey (USGS) quadrangle map locating the property.

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 above-ground properties should be re-assessed every five years, per SHPO policy. 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. The intent is to ensure that only properties that retain significance/integrity remain eligible.

Submit updated information on the property into PA-SHARE, requesting concurrence as necessary in the [*Section 106 Effect Finding Form*](#). The submission should note whether or not review by the SHPO 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 an HRS record exists, this evaluation could be prepared as an amendment to the existing HRS record in PA-SHARE. Where a property was not evaluated for National Register eligibility, as may be the case with local surveys, an agency determination should be made and added to the record in PA-SHARE.

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 above-ground 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, an HRS record will not necessarily be required for all properties. Accordingly, a consultant may be tasked to provide, or the District Architectural Historian may prepare, HRS records 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-minute USGS quadrangle map to be part of the submission to the SHPO. 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 HRS records in PA-SHARE, and/or Identification Level HRS records in PA-SHARE 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 an HRS record. The CRP may, however, elect to complete (or call for the completion of) HRS records for those properties. Typically full records, or Identification Level records, 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) SHPO, consulting party, and/or public concerns. Minimum requirements for properties to be added to the PA-SHARE are provided on the SHPO's website.

The District Architectural Historian also has the authority to determine properties eligible for the NRHP without completion of a full HRS record 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 District Architectural Historian is required to enter an Identification Level record into PA-SHARE for any property in the APE that they are determining eligible (. The *Section 106 Effect Finding Form* provides a check box for the CRP to indicate whether or not the District Architectural Historian is seeking SHPO concurrence on any or all findings of eligibility made pursuant to the No Effect Finding; the notification to the SHPO requires this information as well. If the project will result in a finding of No Effect for above-ground properties, the District Architectural Historian may submit HRS records into PA-SHARE with an indication in the finding that the information is for their records only.

The SHPO may also request the completion of an HRS record in PA-SHARE for any project they are reviewing. The decision on whether or not the completion of an HRS record is warranted is at the discretion of the District Architectural Historian in consultation with the SHPO; the District Architectural Historian may consult with the SHPO and/or the Bureau of Design and Delivery Cultural Resources Section, and, as warranted, with the federal agency in making this determination. 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 SHPO, public, or a consulting party disagrees with level of effort.)

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 complete, or call for completion of, HRS records for only those properties within the APE that the CRP considers to 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 NRHP 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 *Section 106 Effect Finding Form* without creation of a record in PA-SHARE.

For projects anticipated to have adverse effects, full HRS records 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), not previously evaluated for National Register eligibility, and potentially adversely affected. The CRP must seek the concurrence of the SHPO on these determinations when the project results in a potential adverse effect.

c. Identification and Evaluation Reports/Documentation

Generally, when there are very few HRS records, when separate historic context narratives are not required as part of the project, and when the project is to be submitted utilizing the *Section 106 Effect Finding Form*, an eligibility report is not necessary. (See [Chapter XII.A](#) 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 HRS records and Eligibility Reports. The District Architectural Historian may request revisions, as appropriate.

NOTE: When the District Architectural Historian **agrees** with a consultant's recommendations, then the District Architectural Historian will use the report or documentation to support the determination of eligibility and/or finding of effect (See [Chapter VIII](#)). If the District Architectural Historian **disagrees** with a consultant's recommendations, the District Architectural Historian will discuss disagreement with the consultant. If the disagreement is not resolved, the District Architectural Historian will note that the finding is different from the consultant recommendation in the cover memo included with the finding submission and will justify their position. The District Architectural Historian is strongly encouraged to seek the SHPO's concurrence on eligibility findings that differ from the consultant's recommendation. Ultimately, the District Architectural Historian makes the finding of eligibility.

7. 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 SHPO on determinations of eligibility it makes on behalf of the lead federal agency for undertakings that will not affect historic properties. However, the CRP may request the views/seek the concurrence of the SHPO on any determination of eligibility or prior to making a determination of eligibility; for example, the CRP may want to seek SHPO concurrence when the project is controversial. Consultation on eligibility may be conducted as a separate step or may be combined with the finding of effect on a *Section 106 Effect Finding Form*. The documentation will be made available to the SHPO, 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 SHPO on determinations of eligibility it makes on behalf of the lead federal agency for undertakings with a potential to adversely affect historic properties. PennDOT is also required to consult with the SHPO 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 the lead federal agency. 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 a *Section 106 Effect 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 SHPO, public, and/or consulting party concern. The documentation will be made available to the SHPO, consulting parties, and the public. The *Section 106 Effect Finding Form* provides a check box for the CRP to indicate that the CRP is seeking the SHPO 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 SHPO 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. Ideally, this effort should be undertaken during background research.

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 SHPO will be required throughout the Section 106 process, regardless of the effect.

When the District Architectural Historian seeks the SHPO's concurrence on a determination of eligibility as a separate step in the process, the District Architectural Historian will either prepare a memo to the SHPO providing a statement of findings for properties being evaluated or use the *Section 106 Effect Finding Form* as a partial submission. If the determination of eligibility is combined with the determination of effect, the District Architectural Historian will follow the procedures in [Chapter VIII](#).

NOTE: It is critical to understand that when a project has an effect on historic properties, 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 PA 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.

8. Review Period

Per 36 CFR 800.3(c)(4), the SHPO and consulting parties have 30 days to review and respond to findings of eligibility made by PennDOT on behalf of the FHWA or USACE. (The 30-day review period for the SHPO shall be superseded by the terms of the current FHWA/PennDOT/SHPO 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 SHPO or consulting party does not respond within the review period, PennDOT may proceed with the next step in the process. 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 SHPO. The PennDOT Cultural Resources Section Manager will make the decision as to which projects receive expedited processing. PennDOT and the SHPO will mutually agree upon the review time of projects on a case-by-case basis. When there is an emergency declared by the President or Governor, PennDOT and the SHPO will follow the emergency procedures of the Section 106 PA and [Chapter XIII](#).

NOTE: The review period for the SHPO may be superseded by the terms of the current FHWA/PennDOT/SHPO 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 on eligibility findings for the SHPO, as well as 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 significant (i.e., properties eligible for or listing in the National Register of Historic Places [NRHP]) archaeological resources within the area of potential effects (APE) that could be affected by project undertakings. 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.

Archaeological historic property identification and evaluation should be completed in accordance with the SHPO's [*Guidelines for Archaeological Investigations in Pennsylvania*](#); the Secretary of the Interior's [*Standards and Guidelines for Archaeology and Historic Preservation*](#); National Register Bulletin 15: [*How to Apply the National Register Criteria for Evaluation*](#); NR Bulletin 36: [*Guidelines for Evaluating and Registering Archaeological Properties*](#); and, NR 12 & 21: [*Defining Boundaries for National Register Properties \(with Appendix, Definition of National Register Boundaries for Archaeological Properties\)*](#).

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 best professional judgment. The District Archaeologist may consult with the Cultural Resources Unit, the lead federal agency, the SHPO, and/or Tribes and Nations in determining the level of effort.

If the District Archaeologist determines that archaeological studies are needed, then a scope of work will be prepared. 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.1*](#)) 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 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 PA-SHARE. Historic maps, and LiDAR imagery when appropriate, can also be used to determine the potential for historic archaeological sites in the APE. Soil maps, aerial imagery, and the PennDOT Video Logs can be used to provide information on current land use. The [*Statewide Pre-contact Predictive Model*](#) can be used to determine the probability for pre-contact sites. 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. Before beginning archaeological testing, sufficient background research on the history and pre-contact occupation 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. This detailed research can be considered by some as equivalent to a Phase IA report.

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 PA-SHARE, detailed background research should include a review of relevant primary and secondary source materials including, but not limited to:

- Archaeological survey reports (SHPO 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. Detailed site information should not be included in the publicly accessible forms on PATH; however, a list of sites near the project area may be appropriate to include. 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. Detailed background research early in project design should help to determine whether or not archaeological testing will be necessary; often, archaeological testing in urban settings must be deferred until the right-of-way is acquired.

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 a PennDOT Archaeologist

The District Archaeologist, through the use of soil probes, bucket 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 determine if the project can be exempted or make a finding of effect. 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. 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 principal 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 the 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.

5. Deferring Archaeological Testing

Under certain conditions, archaeological identification and evaluation field testing may be deferred until later in project design. The decision to defer is consultative and must be documented (see below). Stipulation III.C.2.f.3 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 based on at least one of these conditions, a Project Programmatic Agreement is not required for the NEPA document to be approved; however, for large (federally funded) EAs and EISs, FHWA should be consulted with prior to the development of the deferral. The Section 106 PA serves as the umbrella agreement that commits the lead federal agency 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, the report should be attached to the *Deferral of Archaeological Testing Form*. This information will be provided to the SHPO, the lead federal agency, Bureau of Design and Delivery Cultural Resources Section, and Tribes/Nations and other consulting parties, if any. During final design and prior to project construction, the District Archaeologist will ensure that archaeological investigations, and, if necessary, site evaluations and mitigation, is completed. Under the terms of the Section 106 PA an agreement document for the mitigation of adverse effects is needed. On federally-funded or permitted projects, the District Archaeologist will notify the lead federal agency and ACHP of the adverse effect and must consult with SHPO, Tribes and Nations, and other consulting parties, to resolve adverse

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). The above-ground findings need to be posted prior to posting the *Deferral of Archaeology Form*.

effects and execute an agreement document. .

6. Project Programmatic Agreement

A project programmatic agreement (PA) 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 effect 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 PA will be required. The PA will include any measures for mitigating adverse effects to historic properties, and appropriate stipulations for completing archaeological testing. (In rare instances, the effects to archaeological resources are known but above ground effects are not. For these situations, a PA is also appropriate.)

If a PA will be prepared, the District CRP will consult with the SHPO, the lead federal agency, the Cultural Resources Section Manager, Tribes/Nations, or other consulting parties in its

development and prior to requesting these parties to sign the PA. The lead federal agency will notify the ACHP to determine if they wish to participate and sign the PA. 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 PA, or individually prior to requesting review of a draft PA.

The review and signing of a PA will follow the same procedures as Memoranda of Agreements in [Chapter IX](#).

7. 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 (EA or EIS) projects with multiple alternatives. There is a high cost associated with testing several alternatives; therefore, it is recommended that archaeological testing be deferred, per 36 CFR 800.4(b)(2), until a preferred alternative has been identified. When several alternatives are identified that have overlapping acreage, testing may begin prior to the identification of the preferred alternative. The archaeological predictive model is developed to provide information for the evaluation of project alternatives. Once a preferred alternative has been identified, archaeological testing is conducted on the chosen alternative using the predictive model as a guide. The predictive model must address both historic and pre-contact archaeological resources. A project specific GIS-based predictive model is preferable, using SHPO's PA-SHARE data. PA-SHARE is a good tool upon which to base model construction. The PA-SHARE has 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 SHPO's GIS Section.

In 2013, the Statewide Pre-contact Probability Model (SP-CPM) was developed in coordination with Tribes and Nations, FHWA, other consulting parties, and the SHPO. The SP-CPM consists of two GIS-based sensitivity layers of probability (high and moderate) for pre-contact archaeological sites based on physiographic, topographic, and watershed areas, as well as additional available archaeological site data. The SP-CPM is accessible via PA-SHARE as a layer. Individual SP-CPM shape files can be requested from PennDOT or through the SHPO. The SP-CPM is designed to act as a tool in PennDOT's planning and design; it is not meant to substitute, in whole or in part, professional archaeological judgment. In order to achieve more effective utility, the model requires testing, reporting of results, and subsequent analysis and interpretation. During planning, the model can be used to help develop site and scope expectations, as well as inform consideration of alternatives for large projects.

For all archaeological surveys conducted by PennDOT staff or by consultants under PennDOT oversight, a three-tiered approach will be used to gather data for validating the Model through the testing of each regional model. For PennDOT archaeological surveys, data collection via

GPS (sub-meter accuracy) point and polygon data, ESRI and ArcMap data systems, and importing the SP-CPM layer files (provided by the SHPO) will assist in the analysis of the model and testing its validity.

The Archaeological testing strategies for projects in Tiers 1 and 2 are based on the size of the “testable” portion of the project APE. Testable APE is defined as all areas that are not disturbed, either through human intervention such as bridge construction, or, through natural means such as an active floodplain, to the extent that precludes the possibility for intact pre-contact archaeological resources. Testable APE includes all non-disturbed areas that are < 15% slope, except when there is a possibility for rock shelters or when there are benches or flatter areas within steeper slopes. Testable APE also includes all non-disturbed areas that are not permanently wet. Areas currently wet may have been dry in the past and permanent wetness should be determined through auger testing, core borings, and/or use of USDA soils maps. Field evidence of soils that are gleyed or heavily mottled and that match the mapped USDA soil description as very poorly or poorly drained should be considered too wet to contain archaeological sites. Areas that do not meet this definition of testable APE are considered to have no potential to contain pre-contact sites.

PennDOT’s current approach to testing or utilizing the SP-CPM is a three-tiered approach based on the testable APE: Tier 1 includes testable area under 0.81 ha (2 ac), Tier 2 includes testable area greater than 0.81 ha (2 ac) and less than 20.2 ha (50 ac), and Tier 3 includes testable area greater than 20.2 ha (50 ac).

1. Tier 1 - Testable Project APE up to 0.81 Hectares/2.00 Acres

For projects where the testable APE is 2 acres or less, 100% of the testable area should be tested at the high level of archaeological testing, regardless of the probability of archaeological sites as assigned by the model. The high level of testing is defined in the State Guidelines, pp. 14-15 as 50 cm x 50 cm screened shovel test pits at an interval of 15 meters, or, 1 m x 1 m test units at an interval of 30 m (4 per acre) in areas with deeper archaeologically sensitive soils. More than half of PennDOT projects are expected to be less than two-acres in size in testable APE. The State Guidelines can be found at: <https://www.phmc.pa.gov>

2. Tier 2 – Testable Project APE greater than 0.81 Hectares/2.00 Acres and less than 20.2 Hectares/50.0 Acres

For projects with testable APEs between 2 acres and 50 acres, professional judgment will be balanced with application of the model (see table below) .

- a. For all areas that are rated as high potential by the model, or, rated as high potential by the best professional judgement of the archaeologist, test these areas at the high potential field-testing level.
- b. For areas that are rated as moderate potential by the model, test 50% at high potential field-testing level. For remaining areas that are rated as moderate

potential by the model, best professional judgement of the archaeologist will determine the level of testing.

<i>Outcome</i>	<i>Professional Judgment</i>	<i>Model Prediction</i>	<i>Testing Protocol – Number of STPs per Acre</i>
1	High	High	16 per ac.
2	High	Medium	16 per ac
3	High	Low	16 per ac.
4	Medium	High	16 per ac
5	Medium	Medium	50% at 16 per ac.; 50% at 7 per ac.
6	Medium	Low	50% at 16 per ac.; 50% at 7 per ac.
7	Low	High	16 per ac.
8	Low	Medium	50% at 16 per ac.; 50% at 5 per ac.
9	Low	Low	50% at 16 per ac.; 50% at 5 per ac.

- c. For areas that are rated as low potential by the model, test 50% at high potential field-testing level. For remaining areas that are rated as low potential by the Model, best professional judgement of the archaeologist will determine the level of testing.

3. Tier 3 – Project Areas greater than 20.2 Hectares/50.0 Acres or 15 linear Miles

Tier 3 projects follow the 2016 SHPO guidelines for testing the model. The acre/mileage threshold is based on size of the project APE, not testable APE. For projects with APE's greater than 50 acres, or for linear survey areas longer than 15 miles:

- a. Using the model for pre-contact archaeological sites, assign testable project areas within the APE to high, moderate, or low probability areas.

- b. Prior to conducting fieldwork, coordinate the testing methodology with the regional SHPO Archaeologist after providing a completed Statewide Pre-contact Probability Model Testing Methodology Form (SHPO Guidelines 2017).
 - i. For projects of this size, the SHPO requires testing methodology be approved prior to fieldwork through consultation with the regional SHPO archaeologists via a [Statewide Pre-contact Probability Model Testing \(PMTM\) Form](#) and that results of fieldwork be reported on in a separate section entitled “Statewide Pre-contact Probability Model Comparison and Testing” (2017).

4. Historic Archaeological Sites

For historic archaeological site potential, historic maps and best professional judgement should be used to determine which areas within the APE have potential for the presence of historic archaeological sites. Areas marked at a low probability for pre-contact archaeological sites but have high potential for historic archaeological sites should also be tested at the high archaeological potential level.

5. Reporting Results of Field Testing the SP-CPM

Recording and reporting the results of field testing the SP-CPM should be within standard reporting formats (i.e., the Record of Disturbance Form, the Negative Survey Form, Phase IA, Phase I, Phase I/II, etc.). Reporting the results should include archaeological modeling or mapping, testing mapped on the project plans (containing a bar scale on each sheet) with a clearly delineated APE and “testable APE” with probability areas of High, Moderate, and Low shown. For areas of no probability, the map should include coding as to why it is designated as no potential (i.e., wet/inundated soils, slope in excess of 15 percent, and disturbances). If archaeological sites are identified, they too should be clearly delineated on project mapping.

SHPO guidelines (2017) require a comparison of results predicted by the probability model for all project areas. Questions to be answered in the comparison include:

1. For each portion of your project area that has a displayed probability, do the results of archaeological testing support the model prediction?
2. If the results of survey differ from the model prediction, why do you think that is the case.

A completed testing methodology matrix should also be included (SHPO 2017). For PennDOT reporting purposes, additional variables (like the CRP Archaeologist Sensitivity) may be included in the comparison matrix, see sample matrix below. Use the model from PA-SHARE or the GIS shape files provided by the SHPO to determine portions of the project area that are located within each sensitivity tier and list all testing methods used within each tier. In the Sites Located section, include Diagnostic Isolated Finds but not Non-Site Collection numbers. The measure of an area should be in square meters.

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 lead federal agency, the SHPO, the Cultural Resources Unit, Tribes/Nations consulting on the project, and other consulting parties through PATH. Known archaeological sites identified by location should be redacted in any report posted on PATH.

Sensitivity Tier	Sensitivity Tier (SP-CPM)	Percent of Total Project APE (SP-CPM)	Sensitivity Tier (Archaeologist On-Site)	Methods Used to Test Tier (Include % if multiple [List 5 of Negative Survey Form])	Number of Sites Located
High	Null	Null	Null	Null	Null
Moderate	20 square meters/ 0.002 ha (0.004 ac)	0.40%	420 square meters/ 0.042 ha (0.103 ac)	PASS File Research 100%; Pedestrian Reconnaissance 100%; STPs 87%; Geomorphology 93%; Metal-Detector Survey 5%	36AA001
Low	4540 square meters/ 0.454 ha (1.123 ac)	99.6%	4140 square meters/ 0.414 ha (1.024 ac)	PASS File Research 100%; Pedestrian Reconnaissance 100%; STPs 29%; Geomorphology; Metal-Detector Survey	36AA001

8. 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 the lead federal agency, the SHPO, the Cultural Resources Section, Tribes/Nations consulting on the project, and other consulting parties through PATH. Known archaeological sites identified by location should be redacted from any report posted on PATH.

9. Archaeological Monitoring

Archaeological monitoring is generally an avoidance assurance or mitigation commitment with 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 the lead federal agency, the SHPO, and considering the views of consulting Tribes/Nations and other consulting parties, monitoring may be part of a solution on the 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.E*](#)

10. 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.b*, above). Fieldwork 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 (ESA) 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 fieldwork allows any archaeological resources that are identified to be fully considered in project

development. Whenever possible, Archaeological Identification Surveys (Phase I) and Archaeological Evaluation Surveys (Phase II) should be combined into a single field effort.

11. 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 the SHPO, Tribes/Nations and other consulting parties should take precedence over field-testing.
- The District Archaeologist should be able to complete the field-testing within a day or two. Projects requiring more than two days of fieldwork 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.

a. PennDOT Highway Archaeological Survey Team (PHAST)

The PennDOT Highway Archaeological Survey Team (PHAST) is a cooperative agreement between PennDOT and the Indiana University of Pennsylvania's (IUP) Applied Anthropology Program. The PHAST team is composed of a Principal Investigator (PI) from PennDOT, a crew chief, who is a graduate student at IUP, and field staff typically composed of undergraduate and graduate students hired through PennDOT's Engineering, Scientific, Technology Internship. PHAST functions to complete archaeological investigation on PennDOT projects of typically no more than two acres. Therefore, PHAST is best suited for small-scale projects requiring equal to or less than 30 shovel test pits or four test units.

Fieldwork, including sub-surface testing, ground-penetrating radar (GPR) survey, or surface survey, is completed between the mid-May PHAST start date and late August, when the fall semester begins. Some laboratory tasks must be started during the summer, so lab days must be scheduled periodically in order to manage collections and begin reports; however, most of the report writing and finalization is completed during the Fall semester after all fieldwork ends. Report production is the responsibility of the CRP and program coordinator, with the Field Director taking the lead role and assisted by the crew interns. The crew members provide the labor needed to deliver the projects. It is also the crew's responsibility to learn the basics of DOT-focused cultural resource management (CRM) field and lab skills during their internship. They also participate in the production of report graphics and figure production, artifact and documentation management and curation, and other project details when in the PHAST office.

The lead project CRP or program coordinator should be with the PHAST crew on the first day of every project and accessible by phone throughout the project for guidance. The CRP or program

coordinator must be accessible to the Field Director and crew in the event of any complex or unexpected findings. The Field Director, lead CRP, and program coordinator are responsible for crew safety at all times and for professional guidance and mentoring of the crew.

12. Archaeological Surveys by Consultants

When a consultant completes the Phase I Archaeological Identification Survey, the District Archaeologist should be involved in developing the scope and reviewing the consultant's technical and work hours. Prior to beginning fieldwork, 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.

13. Archaeological Testing Methods

A Phase I Identification Survey that includes a pedestrian walkover and controlled surface collection in plowed fields may be the most cost-effective means for conducting site identification. However, 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 2021, revised).

In addition to the shovel testing and walkover methodology for identifying archaeological resources, PennDOT also recommends using other geophysical techniques. Each has its own unique advantages and should only be employed by persons with adequate training and background experience: The testing methodology for each geophysical device should be consistent and the device laid on equally spaced transects of no more than two meters, preferably at one meter.

PennDOT, in cooperation with the SHPO, has accepted metal detection as useful for identifying historic sites, particularly battlefield or historic domestic sites where shovel test pits may not aid in patterning recognition or spatial distribution of artifacts. Although PennDOT does not have an equipment preference, it is recommended to have training through the Register of Professional Archaeologists Advanced Metal Detecting for Archaeologists course or with the National Park Service's National Center for Preservation Technology and Training's Metal Detecting for Archaeologists course. PennDOT will request this methodology be approved with guidance from the District CRP and potentially the SHPO assistance as well. Artifacts identified during the course of the investigation should be digitally mapped using Global Positioning System (GPS).

For identifying subsurface features such as burials, trenches, foundations, etc., the suitable geophysical methodology may include 2D or 3D Ground Penetrating Radar (GPR), Electromagnetic Resistivity (EMR), and flux gate magnetometer/gradiometer. These three may be used individually or as an assemblage depending on site conditions, soil typology, and saturation level of the soil. Similar to metal detection, PennDOT recommends that the users of these methodologies be well-versed in their use (i.e., these geophysical methodologies are not for beginners). Likewise, the employed methodologies will be approved by the District CRP and the SHPO, if needed. PennDOT, again, does not have an equipment preference as technology is rapidly changing, but these devices should have an incorporated GPS or other digital spatial mapping tool.

14. 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 results should indicate whether a site was identified, the potential/likelihood of the site being NR eligible, and the need for Phase II studies. 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 could be changed such that the site would be avoided, or if Phase II survey should be initiated. 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. The decision 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.

a. 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 SHPO's [Negative Survey Form](#).

b. 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). Archaeological sites may be avoided after a Phase I survey when eligibility may not be known or after a Phase II survey when eligibility has been determined. 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).

c. 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 SHPO archaeology guidelines (2017), 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. The SHPO and consulting Tribes/Nations and other consulting parties as appropriate 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 SHPO 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.

15. 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 that are NRHP-eligible 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 36 [Guidelines for Evaluating and Registering Archaeological Properties](#) (Little *et al.* 2000) and [ACHP Guidance](#) should be used 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.

16. 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 and specifications in [Chapter XII](#) and the SHPO Archaeology Guidelines. The District Archaeologist may request revisions, as appropriate. When a report or documentation is prepared by the District Archaeologist, the Cultural Resources Section 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 the 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 the finding including a justification for their position and noting that the finding is different from the consultant recommendation. The District Archaeologist will incorporate this statement into the determination of eligibility and/or finding of effect and will include the consultant's report in the documentation. The District Archaeologist is strongly encouraged to seek the SHPO's concurrence on eligibility findings that differ from the consultant's recommendation, even when not required by the terms of the Section 106 PA. For projects subject to Section 106, where the District Archaeologist is in disagreement with their consultant, the District Archaeologist should notify the lead federal agency prior to making any submissions to the SHPO.

17. 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 been previously 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 SHPO on determinations of eligibility is required only when a project would have an adverse effect on archaeological sites. 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 SHPO for PA-SHARE, 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 SHPO's concurrence on eligibility. A copy of the Identification and/or Evaluation Report would be provided to the SHPO for PA-SHARE. When the District Archaeologist is not required to seek the SHPO's concurrence on a determination of eligibility, the District Archaeologist may still elect to formally or informally consult with the SHPO.

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 PA 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 SHPO on a determination of eligibility, Tribes/Nations, 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. If a Tribe or Nation would disagree with a finding the disagreement must be elevated to FHWA. It is important for the PennDOT CRP to recognize/respect that Tribes and Nations have special expertise with respect to pre-contact sites (36 CFR 800(4)(c)(1)).

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 SHPO will be required throughout the Section 106 process, regardless of the effect.

When the District Archaeologist seeks the SHPO's concurrence on a determination of eligibility as a separate step in the process, the District Archaeologist will prepare a letter to the SHPO and attach either an Archaeological Identification and Evaluation (Phase I & II) Report or an Archaeological Evaluation (Phase II) Report. Copies of these reports will also be provided to the lead federal agency, Tribes/Nations, and other consulting parties as necessary. It should be noted that there may be situations where certain information may not be shared with all parties. For example, a Tribe/Nation may offer information with the stipulation that the information not be shared publicly.

If the determination of eligibility is combined with the determination of effect, the District Archaeologist will follow the procedures in [*Chapter VIII*](#).

18. Review Period

Per 36 CFR 800.3(c)(4), the SHPO, 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 FHWA or USACE. (The 30-day review period for the SHPO shall be

superseded by the terms of the current FHWA/PennDOT/SHPO Interagency Funding Agreement for federally-funded projects.) If the SHPO, Tribe/Nation, or consulting party does not respond within the review period, PennDOT may proceed with the next step in the process. The District Archaeologist should put a note in the project file documenting the decision to proceed. If a Tribe/Nation disagrees with a finding the District Archaeologist should consult with the lead federal agency.

PennDOT may occasionally request an expedited review by the SHPO. The decision as to which projects receive expedited processing will be made by the PennDOT Bureau of Design and Delivery Director. The review time will be mutually agreed upon by PennDOT and the SHPO on a case-by-case basis. When there is an emergency declared by the President or Governor, PennDOT and the SHPO will follow the procedures in [Chapter XIII](#).

NOTE: The review period for the SHPO may be superseded by the terms of the current FHWA/PennDOT/SHPO 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.

19. Curation of Artifacts and Records

When archaeological sites are identified in the APE, and upon acceptance of the Identification and/or Evaluation Report by the SHPO, the consultant will prepare artifacts and records in accordance with the curation policy in [Chapter XIV](#). The consultant needs to notify the CRP when the artifacts have been submitted to the State Museum or other agreed-upon curation site. *If the artifacts are submitted to a location other than the State Museum*, it will be with the understanding that the artifacts remain the Commonwealth's property and are at the different location due to a loan agreement with the State Museum. If the artifacts are returned to the landowner, that date needs to be provided to the CRP and the proper steps followed as per Pennsylvania's most recent [Curation Guidelines](#).

C. DISPUTE RESOLUTION ON ELIGIBILITY

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

If the SHPO 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 the SHPO to resolve the objection. If the SHPO 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 participation of the Cultural Resources Section in resolving the dispute. If PennDOT cannot resolve the objection of the SHPO, the following steps should be taken depending on whether or not the project is subject to Section 106 :

Federally-funded or permitted project - unresolved SHPO objections: PennDOT will forward all documentation relevant to the dispute to the lead federal agency, who will consider the objection and consult with the SHPO to resolve the objection. The lead federal agency may direct PennDOT to conduct further research and/or identification efforts or the SHPO to further document their objection. If the lead federal agency determines that the objection cannot be resolved, they will take one of the following actions:

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

State History Code Only Projects - Unresolved SHPO Objections: If PennDOT cannot resolve the objection of the SHPO on a determination of eligibility, and the project is not subject to Section 106, the SHPO or PennDOT may request a determination of eligibility from the Keeper of the NRHP, whose determination shall be binding. If the unresolved SHPO objection relates to an issue other than eligibility determinations, the District CRP will consult with PennDOT's Cultural Resources Section Manager, who may involve the Office of Chief Counsel. If the objection cannot be resolved, PennDOT, through its Office of Chief Counsel, and the SHPO 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 for Identification 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. This consultation will involve the SHPO, as warranted and/or requested by the SHPO and/or the objecting party. PennDOT 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. By mutual agreement, a Tribe/Nation has the right to seek federal agency involvement during any step and may seek federal agency involvement prior to PennDOT attempting to resolve an objection.

Federally-funded or permitted project - Unresolved Tribe/Nation/Public/Consulting Party

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

- *Unresolved Objection by Tribe/Nation/Public/Consulting Party to Level of Identification Effort (where the SHPO concurs on level of identification effort)* - the lead federal agency may elect to consult with the ACHP in determining if PennDOT conducted an appropriate level of identification effort. The lead federal agency will consider the views of the ACHP and direct PennDOT accordingly. The lead federal agency 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, the lead federal agency 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 the lead federal agency and the SHPO agree on, the lead federal agency will consider any additional information relayed by the objector that would cause them to reconsider an eligibility finding. The lead federal agency may elect to obtain a determination of eligibility from the Keeper. The Keeper's determination of eligibility will be final and binding. If the lead federal agency elects not to seek a determination of eligibility from the Keeper, any Tribe/Nation objecting to a determination of eligibility 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 lead federal agency to obtain a determination of eligibility from the Keeper. All information provided to the Keeper of the NRHP by any party shall be shared with all agencies involved, Tribe/Nations (as applicable), and with the consulting parties.

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 the SHPO agrees with PennDOT's determination- the objecting party may submit a NRHP nomination to the SHPO. That nomination will be reviewed by the SHPO Historic Preservation Board prior to submission to the Keeper of the NRHP for a determination of eligibility (see the PHMC's website for more information on the role of their Historic Preservation Board). The determination of the Keeper

of the NRHP will be binding. Alternatively, either PennDOT or the SHPO may request a determination of eligibility from the Keeper of the NRHP.

If the unresolved Tribe/Nation, public, or consulting party objection relates to the level of identification effort, and the SHPO 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 the SHPO 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. If a Tribe/Nation responds after the end of the review period, consult with the lead federal agency.

D. CEMETERIES AND HUMAN REMAINS

State law (9 P.S. §8) prohibits new highway alignments through cemeteries or burial grounds. While this law does not specifically pertain to widening projects, it is strongly recommended that human burials or potential burials be avoided. Refer to Publication 378, Right-of-Way Manual, Appendix C, Section C.01.E for discussion of legal issues concerning acquisition of cemetery land.

For those projects that are adjacent to or in the vicinity of known cemeteries or burial grounds, additional planning and preparation is necessary to properly and respectfully treat human remains whether they are to be moved prior to construction, or in the event that they would be encountered during construction. The potential for burials or objects considered sacred by a Tribe/Nation is of considerable concern. The view of the Tribes/Nations is that they bury their dead in the ground, so the bodies become a part of their sacred earth. These remains are a spiritual connection to the earth. To the Tribes and Nations, removal of human remains is a desecration to both the living and the dead. Likewise, religious groups and ethnic communities throughout the Commonwealth have a variety of opinions on the treatment of human remains, as do individuals. The assessment of whether or not burials are an archaeological resource or not is made on a case-by-case basis in consultation and the site should be treated accordingly.

Each District should maintain a list of contacts on file for use by the CRP, Environmental Manager, Construction Manager, and Maintenance Manager in the event that human remains are encountered during archaeological excavations, during construction, or during maintenance activities.

NOTE: If a cemetery has been in existence as a burial ground for more than 100 years, there have not been any burials within the last 50 years and will be no future burials, or if it is listed in or eligible for inclusion on the National Register, the cemetery is considered a “historic burial place” per the Historic Burial Places Preservation Act. Approval under state law must be granted by the Pennsylvania Historical and Museum Commission prior to the removal of burials, monuments, etc.

Burials may or may not be considered an archaeological resource; however, treatment considerations transcend this distinction. If there are known burials or there is the possibility of encountering burials, the District Archaeologist should prepare a *Plan of Action*. Ideally, this should be done as early as possible. To avoid unnecessary delays, the *Plan of Action* should account for the worst-case scenario, particularly if there will be monitoring during construction. The *Plan of Action* will be used to document the process by which remains and/or grave-related materials will be disinterred/reinterred, and/or determine the circumstances when remains can be left in place. The Plan of Action is developed in consultation with PennDOT’s Office of Chief Counsel, the church and/or cemetery, or burial association, the lead federal agency, the SHPO, local historical and/or genealogical societies, relatives or potential descendants, the county coroner, local funeral director, other consulting parties, and Tribes and Nations, if appropriate. If there will be monitoring, the Assistant Construction Engineer and/or Inspector should also be involved.

The *Plan of Action* should include the following:

- A project description
- Any background or studies (i.e., geophysical survey and/or Phase I survey) conducted and the results
- The entity responsible such as a church, cemetery association, burial association, or Tribe. In the event that the cemetery is no longer associated with a church, cemetery association or burial association, the caretaker(s) can be named. In some cases, such as “abandoned” cemeteries, the Court of Quarter Sessions can direct that the cemetery be placed in the care of the council of the borough, the township commissioners, or supervisors of the township.
- The name(s) of any relatives, descendants, or potential descendants, if known. Alternatively, state that there will be an attempt to identify any potential descendants.

- Who will be responsible for reinterment Usually a funeral director will handle this. In the case of Native American remains, it will typically be the Tribe(s). Descendants have the option to reinter elsewhere.
- Who will move grave markers, if necessary (requires a *Monument Conservation Plan*).
- Note whether there will be monitoring during construction and the circumstances under which remains may be moved or left in place.
- Provide qualifications of the archaeologist/monitor per Secretary of Interior's Qualification Standards. Note that in certain cases a qualified forensic archaeologist may be needed.
- Note any circumstances/limits beyond which construction can continue to take place.
- Timeframes within which any disinterment/reinterment will take place.
- How and where remains will be temporarily stored, if necessary.
- Where remains will be reinterred, if there will be any ceremony, and if so, who will conduct the ceremony.
- If a monument will be needed at the reinterment location (i.e., one per individual, or one for a number of individuals).
- When construction can resume.
- Relevant laws ([Pennsylvania Laws Regarding Burial Practices and Cemeteries](#)).
- Appendices, which should include a location map, engineering plans, previous studies and background information, a *Monument Conservation Plan*, if relevant, and an *Identification of Human Remains Chain of Contact*.

NOTE: Every county coroner's level of involvement will be different and may vary depending on the circumstances. The coroner has the authority to "release" remains, so they need to be contacted in the event of unanticipated discoveries. In situations where disinterment/reinterment will take place prior to construction, they may choose to not become involved. A list of Pennsylvania County coroners can be found at: <http://www.pacoroners.org/cms/members/>

If human remains and/or grave-related materials will or may be encountered, public involvement is necessary as an attempt to notify potential relatives and descendants. The extent and type of public involvement will depend on the situation, but can include township meetings, newspaper

articles, television interviews, flyers, etc. Public notices are part of the requirements for obtaining a court order.

The disinterment/reinterment of human remains typically requires a court order. There are some statutory exceptions to the requirement for a court order, but even if those exceptions apply, the Department may still need to obtain a court order to allow the disinter/reinter permit requirements to accommodate the project schedule. The project manager(PM) should plan for a court order whenever the project will impact known burials and should consider planning for a prophylactic court order when suspected burials may be impacted. This is typically done through Court of Common Pleas. The court order essentially provides blanket permission to disinter. The exception would be if remains are unanticipated, in which case, the coroner may release the remains. Obtaining a court order takes time due to the steps and public notice requirements: a petition to the court and three successive weeks public notice in newspaper, once a hearing date is set there is an advertisement of a notice of the hearing for three successive weeks, the hearing (wait time for available hearing date varies by county and other hearings). This is typically done through the Court of Common Pleas. The District Archaeologist should work closely with the District Press Officer. Be aware that the District Archaeologist will likely be called to testify. The PM needs to be aware of this and plan the project schedule accordingly. In addition, disinterment/reinterment is costly.

Disinterment/reinterment of remains also requires a Disinter/Reinter permit from the Pennsylvania Department of Health, Bureau of Vital Statistics. If disinterment/reinterment cannot take place within 72 hours, these will be two separate permits: one for disinterment and one for reinterment permits. When remain are moved from one cemetery to another, there are also two separate permits. A one-page disinter/reinter permit can be used when there is a court order or when remains are being moved within the same cemetery. Disinter/reinter permits are obtained from the local registrar and must be on site when remains are being disinterred/reinterred. In the case where multiple individuals will be disinterred/reinterred over a period of time, temporary storage may be necessary. Most funeral directors and some county coroners have storage facilities where remains and or monuments and grave-related materials can be temporarily stored until reinterment.

For projects where monument stones will be temporarily or permanently moved, a *Monument Conservation Plan* should also be developed. The *Conservation Plan* should contain pre-construction and post-construction documentation that includes maps, photographs, and possibly video; recommendations for removal; and recommendations for re-setting. For reference, see:

<https://www.nps.gov/tps/how-to-preserve/briefs/48-preserving-grave-markers.htm>.

<https://www.ncptt.nps.gov/blog/resetting-ground-supporting-headstones/>

When moving marker stones, particularly compound or fragile monuments, it may be necessary to have an Architectural Conservator present to monitor.

For those projects where human remains or grave-related materials may be encountered during construction and there will be a monitor, it is recommended that District Archaeologist and archaeology monitor attend the pre-construction meeting. If remains are anticipated to be encountered in a disturbed context, the archaeology monitor should have enough experience to make a determination in the field whether remains encountered are human unless the remains are so fragmented as to be unidentifiable. This will prevent delays in the event that non-human remains are encountered. Due to tight construction schedules, some monitoring may need to occur during the night, and/or involve longer shifts.

NOTE: In the event that remains are encountered partially within required or temporary right-of-way and partially on private property, an *Authorization to Enter* may be

If remains are encountered, security and sensitivity is imperative to prevent vandalism and to shield them from public view. This is particularly important to Tribes/Nations and to many religious groups and communities. Although specific preference may vary by Tribe or other group, appropriate steps can be determined through the consultation process as to whether or not the burial(s) are considered archaeological sites or cemeteries/burial sites. As a general rule, as soon as human remains are identified, excavation should stop at that location. The human remains and/or funeral objects should be left in situ and covered with natural fiber cloth such as cotton or muslin. They should not be photographed. If the possibility of encountering remains was anticipated, such details should have already been determined through consultation. For projects where it is determined through consultation that remains can be left in place, the remains should be documented and mapped. They should be covered with geotextile and fill and marked using a stamped survey pin or something similar. One example is to use a survey marker with the text “PennDOT, CAUTION: GRAVE” and stamp an ID number on top on the marker.

NOTE: Local Amish or Mennonites typically can provide wood boxes or coffins for historic burials. Unbleached muslin is also generally used. Although there are no regulations requiring concrete vaults to be used, cemeteries typically require them. Vault sizes vary slightly, but wood boxes can be made so that they are large enough to accommodate remains yet small enough where up to twelve boxes can be placed in one vault.

If remains and/or grave-related materials are moved, PennDOT will be responsible for preparing a record of removal that includes where the remains were found and where they are reinterred,

the date(s) this took place, and other pertinent information for the individual if known. If there was monitoring during construction, a Monitoring Form should be produced. Details regarding level of documentation included in the Monitoring Form should be discussed with the SHPO (or PHMC for burials), and/or Tribes/Nation, or other groups as appropriate, but would not include items such as photographs of remains. Copies of the records/form should go, as appropriate, to the Tribe/Nation, the SHPO, the lead federal agency (if applicable), church and/or cemetery association, local historical and/or geological societies, and the [Office of Vital Records](#).

The CRP should find the opportunity to foster awareness by the County Maintenance Managers that when conducting ground disturbing activities in the vicinity of cemeteries, there is a potential for encountering human remains and/or grave-related materials. For many cemeteries, particularly older cemeteries, there are marked and/or unmarked burials within or partially within PennDOT's right-of-way.

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Chapter 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

The CRPs will determine 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, the PennDOT CRP will make a finding of "No Historic Properties Affected." The Section 106 consultation 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, design, 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 is possible. 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 may be prepared 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.

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. The effect finding will take into account the views of Consulting parties and the public.

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 by completing the *PennDOT Section 106 Effect 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 Historic Resource Survey (HRS) records; however, if any forms are completed in order to determine National Register eligibility, they should be included with the *PennDOT Section 106 Effect Finding Form*. Consistent with the terms of the Section 106 PA, PennDOT is not required to ask the SHPO's concurrence with the finding of No Historic Properties Affected (see [Section E](#) below). If the CRP does not need the concurrence of the SHPO, the HRS records should be included with the finding with a notation that the forms are for the Cultural Resource Geographic Information System (PA-SHARE) (file) only (see [Section E](#) below for more information on consultation for determinations of effect).

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 HRS record(s). If, following receipt of completed HRS record(s), the District Architectural Historian finds that there are one or more properties within the APE that meet one or more NRHP criteria, they will apply the definition of effect (36 CFR 800.16(I)) and determine if the project will alter the characteristics that qualify it/them for inclusion in the National Register.

NOTE: Not all actions that occur within the National Register boundaries of a property constitute an effect. For example, a project may involve taking a small sliver of right-of-way from within the boundaries of a historic farm property. If the property is large and the buildings are far from this sliver take, the project would not necessarily be affecting the characteristics that make the property eligible.

If the District Architectural Historian determines that the project will not have an effect, a finding of No Historic Properties Affected for above-ground properties will be issued through completion of *PennDOT Section 106 Effect Finding Form*. If the District Architectural Historian determine that the project will have an effect, the criteria of adverse effect will be applied (see *Section B.3* below).

The Above-Ground section of the *Effect 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, HRS records (unless submitted prior to the effect finding), or other documentation completed pursuant to a determination of No Historic Properties Affected should be attached to the finding with indication that the HRS records are for the PA-SHARE (file) only. 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. 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 post the finding of effect separately from the eligibility finding(s). The District Architectural Historian and District Archaeologist can still post a combined effect finding (using the *PennDOT Section 106 Effect Finding Form*) if preferred (see [Section D](#) below). HRS records that were submitted prior to the finding should NOT be incorporated within an Effect Report or included with the effect documentation, as that information should already be posted to PATH.

Alternatively, a combined Eligibility and Effect Report may be developed based on the nature of the project. Completion of a combined report would be at the discretion of the District Architectural Historian. A combined Eligibility and Effect Report can be attached to the *Section 106 Effect Finding Form*.

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. Pursuant to 36 CFR 800.4 (d)(1) and the Section 106 PA, the finding, including associated reports or other supporting documentation, will be made available to the lead federal agency, the SHPO, consulting parties, and the public through PATH (see [Section E](#) below for more information on consultation requirements). Consistent with the terms of the Section 106 PA, PennDOT is not required to ask the SHPO’s concurrence with the finding of No Historic Properties Affected (see [Section E](#) below).

2. No Adverse Effect

If the District Architectural Historian concludes that a project will have an effect, the criteria of adverse effect, found at 36 CFR 800.5, will be applied to the property/properties. If the conclusion is that the effects are not adverse, the District Architectural Historian will make a finding of No Adverse Effect for above ground properties. 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. As part of this effort, the CRP and project team should consider any related the SHPO, consulting party, and/or public comments.

The District Architectural Historian will make a finding using the *Effect Finding Form* as part of a combined finding, or as an individual Above-Ground finding (see Section D below for more information on combined effect findings 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). HRS records for eligible properties should be attached, unless previously posted to PATH. The CRP may seek the concurrence of the SHPO on these determinations of eligibility (see Section E below for consultation requirements). 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 the SHPO as a separate step. If eligibility is coordinated as a separate step, the CRP may still use the *Effect Finding Form* as part of a combined finding, or as an individual Above-Ground finding, with reference to previous coordination on eligibility.

Findings and associated reports will be posted to PATH and the District Architectural Historian will notify the SHPO, and consulting parties that a finding has been made (See [Section E](#) below for information on consultation requirements.) The lead federal agency does not need to receive the notification unless they are already involved in the project, or the CRP will be seeking their involvement.

3. Adverse Effect

If the District Architectural Historian concludes that a project will have an effect on historic properties, after applying the definition of effect, the Criteria of Adverse Effect, found at 36 CFR 800.5, will be applied. If the conclusion is that the effects are adverse, the District Architectural Historian will make a finding of adverse effect either with the *Section 106 Effect Finding Form* or letter memo. The CRP should include a Determination of Effect Report, or other documentation meeting the requirements of 36 CFR 800.11. The District Architectural Historian will post the finding to PATH and notify the lead federal agency, the SHPO, the ACHP, and Consulting Parties that a finding has been made.

NOTE: Notifying the ACHP through PATH (to their e-106 email address) of the adverse effect finding is the means by which the federal agency will meet the requirement under 36 CFR 800.6(a)(1) to notify the ACHP of the adverse effect. If the adverse effect involves a National Historic Landmark or when a Programmatic Agreement will be prepared, the lead federal agency will invite the ACHP to participate. If a project is controversial or PennDOT, the SHPO and the lead federal agency are not able to reach agreement on the resolution of adverse effects, the lead federal agency will invite the ACHP to participate.

36 CFR 800.6 requires that PennDOT (on behalf of the federal agency) develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects. Determination of Effect reports are generally produced to meet the requirements of 36 CFR 800.11, which means that they should include “any conditions or future actions to avoid, minimize or mitigate adverse effects.” Language in 36 CFR 800.11 also specifies that the documentation include summaries of any views provided by consulting parties and the public. Therefore, posting of an adverse effect finding and Effect Report should be undertaken only after consultation with the project team, the SHPO, the lead federal agency, consulting parties and the public on ways to minimize or avoid adverse effects.

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. As part of this effort the CRP and project team should consider any related the SHPO, consulting party, and/or public comments.

4. 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 Twelve-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. The nature and degree of rehabilitation analysis may vary according to the nature of the bridge, the project needs, and the nature and degree of public or consulting party interest in the bridge.

As stated in the previous section, 36 CFR 800.6 requires that PennDOT (on behalf of the federal agency) develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects. The State History Code also requires consideration of avoidance of effects. Therefore, for projects involving the potential replacement of a National Register eligible, contributing, or listed bridge, the CRP must provide an analysis of the ability of the historic bridge to be rehabilitated (or have such analysis conducted). The rehabilitation analysis can utilize the documentation being produced, or already produced, for the Section 4(f) Evaluation (when a federally-funded project involves the potential replacement of an eligible, contributing, or listed bridge) to demonstrate whether the bridge can be rehabilitated to 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. See Chapter XII for more information on rehabilitation reports and a link to a template for rehabilitation analysis reports.

In most cases, this analysis should be provided to the SHPO and consulting parties for comment and consultation, as a separate step, ahead of the finding of effect. A separate step is encouraged because there is usually greater opportunity to have meaningful consideration of, and consultation on, avoidance of adverse effects because of the documentation standards required to accompany a finding of effect. For example, 36 CFR 800.11(e)(5) requires “An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects” . 36 CFR 800.11(e)(6) requires that the determination of effect includes “...summaries of any views provided by consulting parties and the public.” In some cases, it may be acceptable to include this information in the determination of effect, at the discretion of the CRP in consultation with the SHPO.

The CRPs are encouraged to work with the project team on the rehabilitation 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 rehabilitation potential 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 rehabilitation analysis will provide a good-faith and reasonable investigation of rehabilitation as an alternative and document that it either is, or is not, possible to rehabilitate the bridge to meet the project’s purpose and needs while retaining the bridge’s character-defining features.

The CRP should provide a draft rehabilitation analysis to the Highway Design and Technology Section Engineer (HDTs) for review and, if desired, the Historic Bridge Program Manager for review and comment. After any revisions following HDTs review, and lead federal agency comments (for projects where the CRP has asked the federal agency to review), the CRP will post the analysis for the SHPO, consulting party and public comment.

The CRP will work with the project team to consider any SHPO, federal agency (if involved), consulting party or public comments on ways to avoid or minimize effects to the historic bridge and inform consulting parties as to how comments were considered. This communication may occur as a separate step following receipt of comments on the rehabilitation analysis, or as part of a finding of effect. See [Chapter VI](#) for further information on consulting with the public and consulting parties.

One of the ways in which minimization could occur is to rehabilitate the historic bridge despite the fact that the rehabilitation results in an adverse effect. For example, a rehabilitation to meet needs might involve changing the function of the bridge, but the appearance of the historic bridge could be maintained through new materials of similar size and scale. Deciding when it is appropriate to rehabilitate a bridge despite an adverse effect is a decision that will involve the whole project team, including FHWA for federally-funded projects, and will take into consideration the setting (including whether or not the bridge is a contributing element to an historic district), desires of the public and consulting parties, other environmental factors, the significance of the bridge, and other factors.

For bridges that contribute to an historic district, there is a standard treatment in the Section 106 PA. The standard treatment can only be used in situations where the bridge is the only structure or property causing an adverse effect to the historic district. When it is determined that the contributing bridge cannot be rehabilitated to meet the needs of the project, and where minimization (such as through retaining some of the elements of the contributing bridge) is not possible, the standard treatment to resolve the adverse effect allows for a context-sensitive design, provided the SHPO and consulting parties are in agreement. Further information on standard treatments is found in [Chapter X](#).

For bridges that are contributing to a historic district and are not individually eligible for the National Register, the replacement of that bridge may require some additional right-of-way that could be within the boundaries of that historic district. In those instances, the consideration of effects should be separated to consider the contributing bridge, and the additional right-of-way as a second contributing element of the historic district. The *Section 106 Effect Finding Form* should reflect both contributing resources. The purpose for considering both contributing resources separately is to allow the project to use de minimis later in the 4(f) evaluation (where applicable; see Pub 349).

If taking the additional right-of-way will not adversely affect the historic district in and of itself, then the *Section 106 Effect Finding Form* should contain the following language on any federally-funded project:

For Project X, the removal of the contributing bridge is an adverse effect to Historic District Y. Parcel Z contributes to Historic District Y, however the

use of Parcel Z for the Project does not by itself adversely affect the Historic District. The overall effect of the Project to the Historic District is adverse.

NOTE: A historic bridge rehabilitation analysis is not an Alternatives Analysis. The purpose of the analysis is to determine whether or not the bridge can be rehabilitated to meet the purpose and needs of the project without adversely affecting its historic characteristics through application of the Secretary of the Interior's Standards for Rehabilitation. It is not necessary, and usually undesirable, to include all alternatives under consideration; the analysis (or report) should only include the alternative(s) that would involve the rehabilitation or adaptive use of the bridge, except where such additional information is requested by the CRP. The primary purpose of a bridge rehabilitation analysis is to answer two questions: can the bridge be rehabilitated to meet project purpose and needs *and* can the bridge be rehabilitated to meet SOI Standards. An alternatives analysis may still be necessary but is typically completed separately, particularly if rehabilitation is not viable.

C. DETERMINATION OF EFFECTS FOR ARCHAEOLOGICAL PROPERTIES

There are three possible outcomes in determining the effect which 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 are 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, and in consideration of the horizontal and vertical boundaries of the site, 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.6](#) below). Direct impacts to an eligible archaeological site are 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,
- There is only a portion of an archaeological site within the APE that has been determined not to contribute to the overall significance of the property, or
- A project is redesigned so that an eligible archaeological site is no longer within the APE;

The District Archaeologist will prepare the *PennDOT Section 106 Effect Finding Form* and attach one or more of the following documents, as appropriate: a Geomorphology Report, Archaeology Sensitivity Report, the SHPO's *Record of Disturbance Form*, the SHPO'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 the SHPO, Tribes/Nations, and consulting parties that a finding was made, and the finding will be posted for public viewing on PATH. Consistent with the terms of the Section 106 PA, PennDOT is not required to ask the SHPO's concurrence with the finding of No Historic Properties Affected (see [Section E](#) below).

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. The District Archaeologist will prepare the *PennDOT Section 106 Effect Finding Form* either as an individual finding or part of a combined finding and attach an 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 the SHPO 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.d*, below.)

The District Archaeologist will send a notice to the SHPO, Tribes/Nations, and consulting parties that a finding has been made, and will post the finding for public viewing in 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 PATH. The full archaeological report will be posted on PennDOT's SharePoint server, with passwords provided to qualified consulting parties on a need-to-know basis. 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 the lead federal agency, the SHPO, 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. As an initial recommendation for resolving adverse effects, a draft mitigation plan may be included in the Identification and Evaluation Report or may be prepared as a separate document. The draft mitigation plan should include a list of all reasonable mitigation options and describe the benefits and drawbacks of each. The plan should include a recommendation as to which one may be most appropriate. The draft mitigation plan should be the basis for discussion/consultation among the parties on the resolution of adverse effects.

4. Archaeological Standard Treatment in Temporary Construction Areas

Geotextile and fill, or high density polyethylene (HDPE) geomats, 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 using a standard treatment; 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 (the specifications for its use are explained in [Chapter X.B](#)). SHPO and consulting party consultation is not required. However, the use of a standard treatment must be documented in the project effect finding and tracked as a NEPA mitigation commitment in both the CE Expert System and ECTMS. If a standard treatment 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 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 only 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 the SHPO on potential effects, per FHWA policy (2005 Memorandum based on 1987 legal opinion of FHWA's Office of Chief Counsel, and 23 CFR 635.407). Coordination with the SHPO 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. Most sites will be excavated under data recovery; however, some sites may require preservation in place when considered a Section 4(f) resource.

There are four basic steps to preservation in place. First, permanent benchmark data is established and recorded, meaning that the archaeologist will collect baseline data on the site and document this information in a report that is shared with the SHPO, and Tribes/Nations where appropriate. Markers must be 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, including making the plan available to the District Maintenance Unit.

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. Most directly applicable is [Preservation Brief #5](#).

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 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 site stewardship, costs, and efficiency.

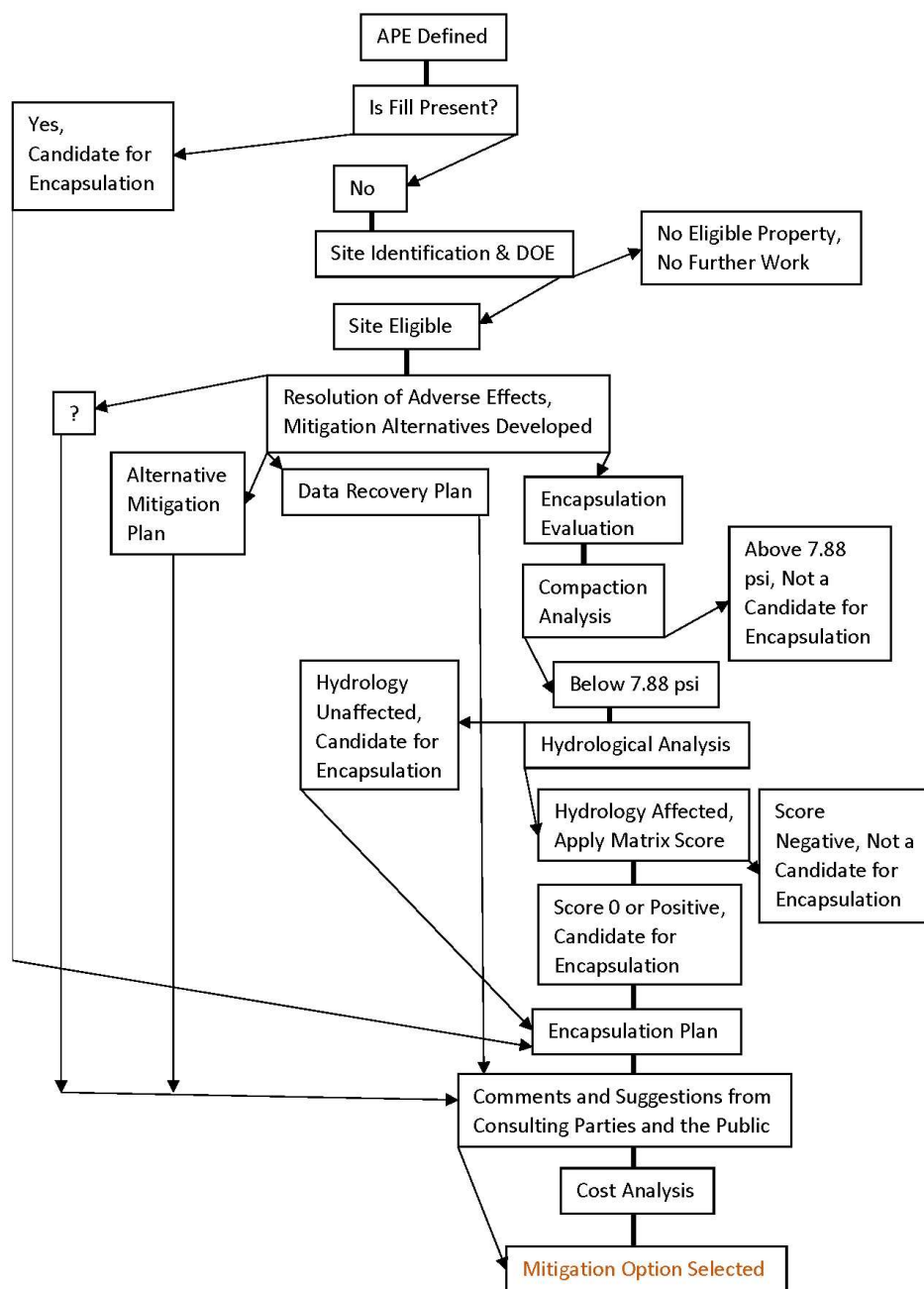


Figure 1: Decision Tree, Archaeological Preservation in Place

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 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 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 while respecting confidentiality concerns. 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 site stewardship, costs, and efficiency.

D. COMBINED SECTION 106 FINDING

In many instances, it will be possible for the above-ground and archaeological findings to be submitted concurrently. A *PennDOT Section 106 Effect Finding Form* has been created to allow an efficient joint finding. This form has three parts: a cover sheet, which includes project information (e.g., MPMS#, ER#, Project Title, etc.), space for a project description, the above-ground properties and archaeological project effect findings, a box to indicate if the form functions also as the early notification and whether or not SHPO concurrence is required or requested, and CRP signatures; an Archaeological Finding section (Attachment A); and an Above-Ground Properties Finding section (Attachment B).

The form may be used to submit the completed project effect finding, or partial effect findings for either above-ground properties or archaeological sites/properties. The *Form* must document the effects conclusions and, as warranted, have supporting eligibility documentation attached.

The Archaeological Finding section (Attachment A) contains a box to indicate where the project does not have the potential to affect archaeological resources. Likewise, the Above-Ground Properties Finding section (Attachment B) contains a box to indicate where the project does not have the potential to affect above-ground resources. The selections *No Potential to Affect Archaeological Properties* or *No Potential to Affect Above-Ground Properties* are only to be used when the project would meet the conditions to be exempt for either Archaeology or Above-Ground, but an exemption cannot be made because not all of the criteria are met. If, for example, the project is a rehabilitation of a National Register eligible bridge that will not include ground disturbance, the District Archaeologist may check the *No Potential to Affect Archaeological Properties* box (on Archaeological Attachment A) providing a brief explanation of why the conditions are met, and does not need to fill out the rest of Attachment A. The *No Potential to Affect* box is intended to streamline the preparation of the project finding.

E. CONSULTATION ON DETERMINATION OF EFFECT

The CRPs will make findings available for review and comment by the SHPO, Tribes and Nations, consulting parties, and the public through PATH, in a manner consistent with confidentiality commitments/concerns. Under the terms of the Section 106 PA, PennDOT is not required to seek concurrence from the SHPO on findings of No Historic Properties Affected and certain No Adverse Effect findings. For all other findings of No Adverse Effect and for all findings of Adverse Effect, PennDOT must request the SHPO's concurrence.

1. Consultation with SHPO

Prior to making a Determination of Effect finding, PennDOT CRPs may consult with the SHPO on the APE or the eligibility of properties over 50 years old. Field views with the SHPO to resolve differences in eligibility or effect may be a useful activity but must be balanced against staff time and workload. Field views are advantageous in that it is sometimes possible to see things in the field that are not readily visible from paper or electronic documentation. In addition, a field view generally provides a more complete context from which the project's impacts on historic resources can be understood. Alternatively, PennDOT Video-logs, or other internet-based resources, can be helpful.

Keep in mind that SHPO staff are managing their workload, which necessarily makes them selective in deciding to take a day for field views. Staff opinions are not the same as an official agency opinion and cannot be presumed to reflect the view of the SHPO, despite impressions that might be left in the field. Decisions made in the field, especially those dealing with eligibility sometimes are not captured in the project file. It may require additional effort to ensure information from a field view is recorded in the SHPO files.

In requesting a field view, the PennDOT CRP should make the purpose of the field view as clear as possible. They should also provide the necessary advance documentation to the SHPO staff, e.g., draft HRS record(s), so that the staff is prepared in the field and can devote time to discussing essential points rather than reading a handout. Sometimes effective written and/or verbal communication precludes the need for a field view altogether. When scheduling field views/site visits there needs to be a defined and agreed upon agenda; photos/notes should be taken and concise minutes/a summary should be produced so that discussion points and actions are captured in writing. These field notes or meeting minutes should be explicitly posted in PATH as part of the Section 106 consultation record.

"Letter-writing campaigns" are not necessary. Sometimes issues can best be resolved through a field view that occurs at the most productive point in the process. At the same time, CRPs should be judicious in their requests for a field view; CRPs should work with the SHPO to take reasonable measures to avoid unnecessary field views. It is possible that the issue/concern can be resolved with a conference call and/or more information.

a. No Effect

Under the terms of the Section 106 PA, the SHPO 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 the SHPO concurrence on Findings of No Historic Properties Affected. Therefore, there will be no review period for a response from the SHPO. However, the SHPO may elect to review and comment on any project within the review period.

Once the finding is made, the Section 106 process is considered completed and a NEPA document may be approved. However, if the SHPO or a consulting party on the project 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 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 the Section 106 PA, the PennDOT CRP is not required to seek the concurrence of the SHPO 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 the lead federal agency, a Tribe/Nation, or a consulting party.

***NOTE:** The CRP may elect to consult with the SHPO 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.

c. Adverse Effects

Pursuant to the Section 106 PA, the PennDOT CRP is required to seek the concurrence of the SHPO 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 the SHPO's agreement on

not only that the project constitutes an adverse effect, but also that the adverse effect cannot be avoided.

Refer to the Dispute Resolution Section below for information concerning resolving disputes when the SHPO 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 the SHPO does not object within the specified review period, PennDOT may proceed with resolving adverse effects (see [Chapter IX](#)).

2. SHPO Review Periods and Expedited Reviews

The SHPO review period will follow the current FHWA/PennDOT/SHPO interagency funding agreement (for FHWA funded projects). If the SHPO 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. 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.

Expedited Reviews - PennDOT may occasionally request an expedited review from the SHPO. PennDOT and the SHPO will mutually agree upon the review time on a case-by-case basis. The Cultural Resources Section Manager must make all requests for expedited review.

When there is an emergency declared by the President or Governor, PennDOT and the SHPO will follow the procedures in [Chapter XIII](#).

NOTE: Following receipt of comments, it is incumbent upon the CRP, working in concert with the project team, the SHPO, 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, minimize, or resolve a potential adverse effect. The default, unless an alternative schedule is established, will be 30 days.

3. Consultation with Tribes and 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 the SHPO 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. The level of consultation should be commensurate with the degree of impact and the properties affected. PennDOT will make an effect finding through PATH. Posting the finding to PATH may or may not be a sufficient level of effort for notifying the public or for soliciting consulting parties' input; the level of effort depends upon the nature of the project, the degree of

public and consulting party involvement, and the nature of effects. The degree to which consulting parties have internet access is another important consideration.

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)).

NOTE: It is critical to understand that when a project has an effect on historic properties, 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 PA 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 and environmental 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.

The presumption in the regulation is that the SHPO has 30 days to comment; however, under the Section 106 PA, the requirement for that comment period is waived. The SHPO 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 the Dispute Resolution Section below.

Participating Tribes/Nations and consulting parties must be notified when a finding has been made. The District CRP, in concert with the project team and the SHPO, as warranted, will consider any views received in writing concerning the effects of the project and within the 30-day review period afforded by the regulations. Refer to the Dispute Resolution Section (below) for information concerning dispute resolution when the SHPO or a consulting party notifies PennDOT that it disagrees with the finding. If no party objects within the specified review period, including the SHPO for projects they are reviewing, PennDOT may proceed with the undertaking without further review.

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

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.

Following receipt of comments, it is incumbent upon the CRP, working in concert with the project team, the SHPO, 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, mitigate or resolve a potential adverse effect. The default, unless an alternative schedule is established, will be 30 days.

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 SHPO, time extensions may be granted.

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 or posted on PATH as appropriate.

4. Consultation with the Lead Federal Agency

The lead federal agency must be notified of all findings of No Adverse Effect where PennDOT is requesting the lead federal agency's involvement/the lead federal agency is already involved, and on all findings of Adverse Effect. FHWA and the USACE prefer to receive a separate email from the generic email generated from the PATH notification for any project where PennDOT is

seeking their involvement. PennDOT will invite the lead federal agency to participate in resolving adverse effects, and they will be involved in the development, review and execution of agreement documents. The lead federal agency may elect to participate in any project at any time.

5. Consultation with the ACHP

Under the terms of the Section 106 PA, PennDOT will notify the Advisory Council on Historic Preservation (ACHP) of any adverse effect. Send the notification to the ACHP e106@achp.gov email address, while also copying the ACHP-FHWA Liaison at the same time as the finding and notification to the SHPO and consulting parties. The ACHP will have 15 days from receipt of the information to advise the lead federal agency whether it will participate in consultation. The lead federal agency will notify the Cultural Resources Section Manager and the District by email of the ACHP's decision.

No notification to the ACHP is required for projects subject only to the State History Code.

6. 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. Notify the lead federal agency prior to contacting and/or consulting with NPS/NHL office.

F. DISPUTE RESOLUTION ON EFFECT

1. Disagreement with Effect Finding Within the Review Period

If the SHPO, 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 should request the participation of the Bureau of Design and Delivery Cultural Resources Section. If the disagreement is not resolved, the CRP or Cultural Resources Section 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 the SHPO 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.

NOTE: Consulting parties may independently, and at any time, request the ACHP to participate in consultation.

When agreement on effect cannot be reached with the SHPO, FHWA (or USACE) will request the ACHP to comment.

For projects subject only to the State History Code, if the PennDOT CRPs cannot resolve the disagreement with the SHPO, the CRP should notify the Cultural Resources Section. If the dispute cannot be resolved, PennDOT and the SHPO 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 the lead federal agency or the ACHP. If the objecting party feels that the objection has not been satisfactorily resolved, they may appeal to the lead federal agency or the ACHP for federal-aid or USACE permitted projects, or to the SHPO for projects subject to the State History Code.

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

If the SHPO, 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 scope or activities have changed and/or 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 A.5*](#)),
- 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 the SHPO, the lead federal agency, 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, prepare a file

memo, or make a note in the CR Section of the CE, to document that the finding has not changed, and no additional coordination is necessary.

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Chapter 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 developing alternatives to avoid adverse effects, developing options to minimize adverse effects, or agreeing to mitigate adverse effects.

When the project is federally-funded or permitted, 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. For 100 percent state-funded projects without a USACE permit, the agreement document is called a Memorandum of Understanding (MOU). If the signatories to the MOU are the sole signatories, then a Letter of Understanding (LOU) can be used.

A. CONSULTATION

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.

Per 36 CFR 800.6, the resolution of adverse effects involves consultation with FHWA (or the USACE), the SHPO, 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. The CRP must notify the Advisory Council on Historic Preservation (ACHP) of the adverse effect and provide them the opportunity to elect to participate in resolving effects.

The intent of the Section 106 PA is to seek a resolution of adverse effects by engaging in a dialogue with consulting parties, the SHPO and the public. Consultation on resolving adverse effects may be accomplished through meetings, and/or phone or video conferences and/or field views, or other means. 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 explicitly required.

The documentation prepared for the Adverse Effect finding may include options for mitigation, but this should be considered a starting point for discussion. Unless there are special circumstances, such as a declared emergency, the CRPs should not submit an Effects Report with proposed mitigation and request the SHPOs concurrence on the adverse effect and the proposed mitigation.

Mitigation can take many forms. Aside from marketing historic metal truss bridges for adaptive use, there is no standard or specifically required mitigation. The CRPs should work with the SHPO and consulting parties to identify appropriate mitigation based upon the nature of the resource and the nature of the effects. The SHPO maintains “mitigation criteria” that they may reference in the discussions and should be considered in the discussions.

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, or neighborhoods or religious groups who may not have previously expressed interest in the project, as appropriate. These Tribes and Nations, neighborhoods, and/or religious groups must be given the opportunity to consult on the resolution of adverse effects (see [Chapter V](#)). If the burials are determined not to be National Register eligible, consultation with interested groups may still be appropriate.

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

When the lead federal agency (for projects with federal funding/permits), PennDOT, and the SHPO 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 no Tribe/Nation or other consulting party has requested to sign the agreement document and/or when all commitments will be completed by the signatories to the Section 106 PA (e.g., PennDOT). 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 LOA does not need extensive legal review.

If the ACHP has elected to participate, 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 Programmatic Agreement (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 project PA is a legal document that commits the lead federal agency/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 usually must be determined and any mitigation measures for adverse effects must be included in the PA .

For state-funded projects without a USACE permit, a LOU between PennDOT and the SHPO is usually prepared.

The MOA, LOA, LOU, or PA, once executed, is a legally binding agreement on the signatories.

NOTE: Mitigation measures for both archaeological and above-ground historic properties must be included in the same Agreement document if both are adversely affected. If above-ground and archaeological findings cannot be made simultaneously, the CRP must either wait for the other finding or create a PA to move forward without the other finding.

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

The parties involved in signing a MOA, LOA, LOU or PA are called signatories, invited signatories, or concurring parties, depending on their responsibilities and involvement in the Section 106 process. Signatories (for MOAs, LOAs, and PAs) include the federal agency (FHWA or the USACE, as appropriate), the SHPO, 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 does not sign LOAs. The ACHP, FHWA (or USACE), and the SHPO 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. PennDOT's primary role in carrying out the stipulations of a MOA, LOA, or PA typically makes PennDOT 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 or PA as a concurring party. Concurring parties are individuals or organizations that are invited by the SHPO 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 or PA 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 or PA. When a federally-funded project is sponsored by a local entity and there are no state funds involved (e.g., a Transportation Alternatives Set-Aside (TA Set-Aside) project), PennDOT should sign as a concurring party. The refusal of any party invited to concur in the MOA or PA does not invalidate the MOA 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 SHPO. 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 Design and Delivery Cultural Resources Section Manager for review prior to circulation to the SHPO, Tribes and Nations and other consulting parties. After the Section Manager's review, and/or concurrent with that review, the document will be reviewed by the Office of Chief Counsel. MOAs, MOUs, and PAs are typically not reviewed by the Office of General Counsel (OGC) and the Office of the Attorney General (OAG) in advance as long as the template is used.

The District CRPs will be responsible for coordinating the review of draft agreements with all parties, including the lead federal agency, the SHPO, Tribes/Nations, and other consulting parties. The Cultural Resource Professionals will usually send the draft concurrently to the reviewers through PATH. 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 and 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 Section Manager. The Cultural Resources Section Manager will circulate the documents within PennDOT, and to the SHPO and the lead federal agency, as appropriate, for signature. The Cultural Resources Section Manager will circulate the document to OCC, who will take responsibility to coordinate OGC and OAG review and signature (for MOAs and PAs). LOAs are reviewed/signed only by the OCC. The preparation of, and obtaining, signatures for an agreement document can be 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 (the federal agency is the last signatory in the process except where the ACHP signs). For LOUs, the agreement is executed when the SHPO has signed. The LOA reduces the time to execute an agreement to 2 to 3 weeks because the only legal review is by OCC.

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 SHPO and lead federal agency should be kept informed on the progress of the implementation. PATH has a section for recording and tracking mitigation commitments. The CRPs will be responsible for entering mitigation commitments in the appropriate section and, upon the completion of each stipulated activity, shall update PATH.

For commitments that will be completed during construction, the commitment also needs to be entered into the Environmental Commitments and Mitigation Tracking System (ECMTS). The Project Manager or Environmental Manager (where applicable) must ensure that these commitments are carried forward into Final Design and Construction through the Plans, Specifications and Estimate (PS&E) package and contract provisions.

If project conditions change such that any mitigation commitments cannot be completed, the CRP will work with the central office Cultural Resources Section, FHWA or the USACE (as appropriate), the SHPO, other signatories and concurring parties and consulting parties to establish appropriate alternative mitigation, if desired, and amend the agreement.

The District CRPs should also monitor the agreement document's sunset clause. A sunset clause provides an end-point, or end-date, for the agreement. 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 changes 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 (LOU) with the SHPO (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, the lead federal agency will follow the requirements of 36 CFR 800.7 to complete the Section 106 review process. The lead federal agency will request the comments of the ACHP and notify all consulting parties of the request. The ACHP will respond within 45 days. The lead federal agency 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 the SHPO, consulting parties and the public, as well as project constraints and parameters. In general, Section 106 mitigation should be relevant to the resource and the severity of the impacts and the lead federal agency will determine whether they can support it. 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 four types:

- Commitments to design elements for the project that minimize impacts to historic properties, and/or
- Scholarly research and/or site recordations to advance the understanding of a property or property type and/or preserving a record of the existence of a property, and/or
- A public education component.
- Mitigation that supports the preservation of similar resources in the local or regional area, or potentially the resource itself by others.

The following list of mitigation options is in no particular order of preference and any of the following could be combined, as appropriate through consultation to resolve adverse effects.

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 or culvert in a historic district is one example where context-sensitive design and the PennDOT Connects approach to planning and design can come into play. A context-sensitive design bridge is one that is, to the degree possible, sensitive to, or in keeping with, its 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. Additionally, there may be engineering or environmental constraints or hydraulic issues that dictate the type of bridge that can go into a particular location. However, it is incumbent upon the PennDOT CRP to work with project and environmental managers and others on the project team to consult with the SHPO, 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. Chapter X (Standard Treatments) includes discussion of the application of a standard treatment for contributing bridges involving context-sensitive design. Where the conditions outlined in the Section 106 PA for invoking this standard treatment are met, a separate MOA, PA or LOA is not required.

2. Recordations and Scholarly Research

Recordations: Federally-funded or permitted projects adversely affecting historic properties through significant changes or demolition require that the historic property be documented through a historic recordation unless a sufficient record exists. 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, that will be adversely affected, typically will be documented to state level standards. State level documentation is the typical level of documentation regardless of whether the project is federally-funded/ federally permitted or state-funded and subject only to the State History Code. The level of recordation will be made at the time of a project through consultation with the federal agency and the SHPO, and in consideration of any views expressed on the matter by the public and/or consulting parties.

The current SHPO standard for state level recordation is the production of an HRS record. Since an HRS record is already required pursuant to the 106 PA for properties which may be adversely affected, this requirement will already have been met by the time of consultation to resolve adverse effects through mitigation. Therefore, the only potential for a recordation as a mitigation measure is where the SHPO, PennDOT and FHWA and/or the USACE agree to further documentation, such as an Historic American Engineering Record (HAER) recordation and/or a Historic American Buildings Survey Level I, II, or III requirements. HABS/HAER Level III is similar to the HRS record except that the SHPO and state archives will accept digitally produced photographs. The HABS/HAER program should be contacted to acquire a HABS/HAER number and to review draft documentation. Any HABS/HAER Level II or Level I documentation should follow HABS/HAER standards and be submitted to the National Park Service, the SHPO, and any other local repository that might be warranted.

Individually Eligible Bridges: It is PennDOT's understanding that HAER Level I (full measured drawings, large format photographs, history) or Level II (reproduced existing drawings, large format photographs, history) recordation, for historic bridges not previously recorded to HAER standards, is warranted only when bridges are determined to be significant on the national level. In general, the statewide historic bridge inventory and evaluation completed in 2001 meets or exceeds state level recordation standards for bridges determined eligible, including production of archival quality black/white images that are in the possession of the SHPO. 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, due to the passage of time since the statewide inventory, photographic documentation prior to demolition should be part of the mitigation package. HAER Level II, and sometimes Level I, recordation is recommended for any nationally significant bridges, including metal truss bridges with a high or exceptional preservation priority not previously recorded to HAER standards that will be demolished.

Bridges Contributing to an Eligible Historic District: Bridges that are not individually eligible but are determined to be contributing to an eligible Historic District, will generally not be recorded unless they are not sufficiently documented such as through an historic bridge inventory.

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 that can benefit the public, typically in the form of educational activities or products. [Chapter 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 the SHPO, consulting parties, the public, FHWA 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, the interest in use, as well as project constraints and parameters. The project team is encouraged to work with the SHPO and consulting parties early in the project development process, once a determination is made that avoidance of adverse effects is not possible.

4. Mitigation that Supports the Preservation of Similar Resources or the Adversely Affected Resource Itself

The SHPO, the public, and consulting parties are increasingly encouraging mitigation that benefits, or potentially benefits, similar resources, or even the resource itself by outside parties. For example, for the replacement of an individually eligible metal truss where the bridge is marketed, FHWA will support the adaptive use of the bridge through preservation assistance that may in part fund items like the lifting, disassembly, storage, or transportation of the bridge to a new location. Alternatively, when an adaptive use of the bridge cannot be found, FHWA may agree to support the preservation of a similar bridge through funding the dismantling and storage of that bridge, documentation that aids in the marketing of another bridge, or contribution to a historic bridge preservation fund.

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* Preservation in Place in [Chapter VIII](#)).

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 the lead federal agency, the SHPO, 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 that the site is expected to answer. Research issues will vary with the type of archaeological site. Some examples of research topics for pre-contact 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 the SHPO 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 pre-contact 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, while respecting confidentiality concerns. 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, rack cards, 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, neighborhoods, religious groups, and/or other relevant parties respecting confidentiality.
- *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 SHPO guidelines and is to be reviewed by the District Archaeologist, the lead federal agency, the SHPO, 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 Section and the lead federal agency. 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. The lead federal agency (as applicable) and PennDOT will consult with the SHPO, 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 a field view with the SHPO at least once during data recovery excavation to discuss results and/or any changes that might be proposed to the data recovery plan. Additional field views by the

SHPO may be needed, particularly on large or complex sites. The lead federal agency (as applicable) and any consulting Tribes/Nations should be invited.

If needed, at the conclusion of the data recovery excavations, the District Archaeologist will request concurrence from the SHPO 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 SHPO'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 the lead federal agency (as applicable), the SHPO, 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 Section, the lead federal agency (as applicable), and the SHPO. 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. Other interested groups such as religious or cultural organizations or elected officials may be notified as appropriate.

FHWA shall meet with the appropriate parties to discuss a course of action regarding human remains, graves, or grave-related objects. Excavation of these remains, grave, or grave-related objects should not be assumed. The lead federal agency (as applicable) 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](#)).

e. Curation of Artifacts and Records

Upon acceptance of the data recovery report by the SHPO, 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 SHPO 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 of more value. occur. 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 mitigation should be relevant to the resource and the severity of the impacts.

Alternative/creative mitigation plans will be reviewed by the District Archaeologist, the Cultural Resources Section, the SHPO, the lead federal agency, 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 for public involvement are tracked and completed. This should be done by entering the commitments into PATH and the Environmental Commitments and Mitigation Tracking System (ECMTS), as appropriate.

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-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/lead federal agency'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/ lead federal agency'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 SHPO Publications Catalog. They target the general public and secondary school-age students. Manuscripts must be written by authors with direct, demonstrable experience writing for non-professionals, and are reviewed by District staff, the Cultural Resources Section and the SHPO Publications. To ensure a consistent appearance, a design template, available through the Cultural Resources Section, 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/ lead federal agency'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/ lead federal agency'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/ lead federal agency'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/ lead federal agency'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/ lead federal agency'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. When considering this as a mitigation option, ensure that there is an entity that agrees/commits to using it.

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/ lead federal agency's sponsorship of the nomination. Preparation of press releases and a plan for their release is required. FHWA's preference is to contribute funding "up to" a pre-defined amount for another entity to pursue the nomination. The commitment should reference that FHWA's responsibility ends with the funding contribution.

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/ lead federal agency'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/ lead federal agency'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.

Rack Cards

Rack cards should feature a minimal amount of technical information on a single- or double-sided brochure that directs the reader to a website and/or to a link with more information. The content should be informative and accessible to all audiences with the option to share additional information via a featured public webpage.

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 acknowledge PennDOT's/ lead federal agency'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/ lead federal agency'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 homepage as well as [PennDOT's Cultural Resources site](#).

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. When determining whether or not to launch a website, consider and identify who will be responsible for funding and providing maintenance.

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/ lead federal agency'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.

F. TRACKING AND ENSURING MITIGATION COMMITMENTS THROUGH CONSTRUCTION

Commitments made through the Section 106 process and captured in MOAs, LOAs, LOUs, or project PAs are tracked in PATH and are open to the public, especially with respect to what was committed, deadlines, and lead entity. The same is true for commitments made in LOUs for state-funded projects. Commitments made in any of these agreement documents must be captured in the NEPA document and tracked in ECMTS (Environmental Commitments Mitigation Tracking System). Other commitments that may not be included in a Section 106 or State History Code agreement document also need to be included in the NEPA document and tracked in ECMTS (e.g., rehabilitation to Secretary of Interior Standards, or protection of an archaeologically sensitive portion of the construction area from heavy equipment damage).

PennDOT CRPs are responsible for tracking Section 106/State History Code commitments and should work with the Environmental Manager to ensure that the commitments are incorporated into the environmental documents (CE's, ED's, and BRPA's) and the ECMTS. The CRPs need to update the status of commitments in PATH. Un-met commitments are cleared through the Section 106 process, by amending or terminating the agreement document.

While many of the responsibilities for completing mitigation commitments during construction falls to the construction inspectors, the CRPs can take proactive steps to improve the chances for a successful outcome. No single action or practice will guarantee that outcome, but taking multiple actions improves the odds that a mitigation commitment will be successful. There are three basic steps that can be taken:

- Strong communication plans are essential
 1. Let design team know that extensive coordination will occur
 2. CRPs attend pre-construction meetings to remind construction and contractor about commitments.
 3. Touch base with contractor during construction. Visit the project.
- Write a clear and detailed specification and ensure that the specification becomes a part of the construction document bid package that goes out and that the contractor uses for the project.
- Have the PM/EM/CRP/designer review the final plans, including special provisions, prior to advertisement to ensure mitigation commitments are in place.

Currently, Section 106 commitments (not to be confused with environmental commitments) are recorded in CEES Part B, Section E, and/or in MOAs/LOAs, LOUs or PAs. In principle, all commitments are captured in ECMTS. However, those commitments that mitigate for adverse effects and are itemized in the MOA/LOA/LOU/PA document are also captured in PATH.

Others, including environmental staff and construction inspectors may be the primary agents for completion and documentation for the completion of the ECMTS checklist; however, it is primarily the responsibility of the CRPs to verify that cultural resource commitments are met and, for the MOA/LOA/LOU/PA commitments, the CRP is to document the completion in PATH.

For those commitments captured in ECMTS, the completed Mitigation Plan Checklists should be provided to the Environmental Manager for use in meeting with finals unit prior to finalizing the contract.

For those commitments captured in PATH, the completed Mitigation Plan Checklists should be posted to PATH along with the marking of the mitigation as completed.

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Chapter 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 that 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 U.S. Army Corps of Engineers (USACE), State Historic Preservation Officer (SHPO), 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 is severely limited, or the treatment is a proven best practice and replicable.

NOTE: Although the philosophies of flexible application of Section 106 and standard treatments may appear to conflict, in practice they can remain 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 potentially the most 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.

Standard treatments has their advantages. They can be predictably applied to a particular problem because they are standardized. Therefore, 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.

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 Resource Professionals (CRPs) 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 exploring, 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 the PennDOT CRP:

- Installation of new guiderail (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. ARCHAEOLOGICAL PROTECTIVE MEASURES IN CONSTRUCTION AREAS

1. Geotextile and Fill

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 handheld 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 regard 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 District Archaeologist 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.

2. HDPE Geomattting

High Density Polyethylene (HDPE) Geomats are an alternative to geotextile and fill. HDPE Geomats have a distinct advantage over geo-and-fill, primarily in cost and labor. Geomats can be reused, whereas geotextile cannot. Geomats can be installed from a flatbed truck with a crane lift and manual labor (e.g., to interlock the mats). Geotextile and fill require the use of loaded tri-axes, front-end loaders or bulldozers, and a lot of fill material. Likewise, the removal is also more advantageous for geomats, and likely would have less of a ground-disturbing effect.

This alternative measure has been approved for use by both FHWA and the SHPO. However, with the following caveat: this is **not** a PennDOT-approved construction material and is not found in PennDOT's Bulletin 15: Qualified List for Construction (*Note: this product is not to be confused with the already approved geomembrane, which is not applicable for use in protection of archaeological resources). FHWA, however, has recommended that at least two differing vendors must be sought, to avoid having a proprietary item. Additionally, FHWA still requests a plan to be developed for the implementation of the geomatting, which would be included as a construction special item. This plan would include the use of compression sensors to monitor soil compaction, type of matting (closed cell vs. open cell), and location of matting on a plan sheet.

The SHPO has approved the use of timber matting (currently used for construction in wetlands) on pipeline projects. PennDOT does not feel this is an advantage over geomatting since timber matting would likely exceed the compression threshold over both geotextile and fill and geomats.

Construction materials continue to evolve and the use of either geo-and-fill or HDPE geomats should not preclude the use of other protective measures should they prove to be superior in saving time and money while also providing better protective measures to archaeological resources.

C. REPLACING A CONTRIBUTING BRIDGE/CULVERT IN A 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 it is determined in the Section 106 process that the bridge cannot be rehabilitated to meet the project purpose and needs, if 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 document 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 that are in keeping with the characteristics that make the historic district eligible for the National Register [i.e., a Context-Sensitive Design (CSD)]. 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 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 decided in consultation with the local community.
5. Appearance is influenced by 12 determinants:
 - i. Horizontal and vertical geometry

- ii. Scale and mass²
- iii. Superstructure types
- iv. Pier placement and span arrangements
- v. Abutment placement and exposed height
- vi. Materials³
- 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 the social function of the bridge, as part of CSD. If the parties involved in consultation cannot agree on an appropriate design treatment, the participation of Cultural Resources Section and/or the lead federal agency may be sought to aid in resolving or making a final determination.

With some exceptions, replacement of bridges on existing alignments 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. However, the design of the replacement bridge should not be so advanced, prior to the Section 106 process, as to unnecessarily eliminate design types that could better resolve adverse effects. Further guidance may be found in AASHTO's [*Bridge Aesthetics Sourcebook*](#) (2010), as well as the Transportation Research Board's (TRB) [*Context-Sensitive Design Options for Workhorse Bridges in Rural Historic Districts*](#) (2019).

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 federal-aid, FHWA will participate in certain activities pursuant to preservation to facilitate the lifting, dismantling, and, in some cases, transporting of the bridge to a new location at the request of the new owner.

²¹ Although 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.

³²The 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 the PennDOT Department of General Services (DGS).

NOTE: Not all historic bridges will be marketed. Marketing occurs when it is agreed upon through the Section 106 process as appropriate and where adaptive use is deemed feasible. For example, historic stone arch bridges are not marketed unless the new bridge will be built on a new alignment and there is a reasonable possibility of the bridge being reused in place.

The marketing process can vary but, in general, the following steps are taken to market a bridge owned by the Commonwealth:

1. Develop MOA or LOA between FHWA, or USACE, and the SHPO stipulating bridge marketing as a mitigation measure. Advertise bridge on bridge marketing website and notify potential groups:
 - a. District will notify the Bureau of Design and Delivery Cultural Resources Section to place the bridge on its bridge marketing website.
 - b. District provides photograph and description of bridge for websites along with anticipated let date.
 - c. The Cultural Resource Section 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 Section 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 all entities in their database.
 - g. PennDOT will request non-binding letters of interest from groups interested in the bridge, typically 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 Section completes the Disposition Form in the electronic DGS Disposition System and works with PennDOT's Property Control Officer on the disposition. The Cultural Resources Section will work with the Office of Chief Counsel of PennDOT and DGS on special terms and conditions that will accompany the sale, including reference to the availability of preservation assistance for the buyer. [This should only occur after the nature and extent of preservation assistance is established by the lead federal agency, in consultation with PennDOT and the SHPO].
 - a. PennDOT will update its website to note when a bridge has started the surplus process and will refer consulting parties to DGS's auction system.
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.
5. A minimum 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 minimum 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 concerned parties (that PennDOT provided to DGS) of the anticipated bid opening.
 - c. A 60-day response time will typically 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 that:
 - a. States the requirement to consult with the SHPO prior to undertaking any rehabilitation of the bridge that would affect the character defining elements.
 - 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 preservation assistance dollars (for projects involving federal funds), which will be in the form of reimbursement of approved work/actions (e.g., costs to lift, dismantle and move the bridge).
 - e. Requires the purchaser to assume all responsibility for disassembling and removing the bridge unless other agreements are made with PennDOT.

Additional Steps:

The Cultural Resource Section and the District Architectural Historian will work with the PennDOT Project Manager, Environmental Manager, and winning bidder, as necessary, on additional steps to coordinate the bridge relocation.

For locally owned bridges, the Cultural Resources Section and the District Architectural Historian will work with the bridge owner to assist in coordinating the sale or donation of the bridge according to their surplus property disposition procedures.

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 the SHPO.

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 their finding of effect.

F. DOCUMENTATION

No special forms are required to document a standard treatment. The *PennDOT Section 106 Effect Finding Form* can be used to make the finding of no adverse effect or adverse effect for this class of projects. For projects with an adverse effect where a standard treatment is applied, a project Letter of Agreement must be used to document the mitigation.

G. MODIFYING THE LIST OF STANDARD TREATMENTS

PennDOT, in consultation with FHWA, USACE, the SHPO, 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, USACE, the SHPO, PennDOT and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix B of the Section 106 PA and this Handbook as soon as is practical. When the standard treatment applies to properties of traditional cultural and religious significance to Tribes/Nations, PennDOT shall consult with appropriate tribes in developing the standard treatment. A list of standard treatments in effect is found in Appendix B 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).

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Chapter XI. NON-FEDERAL HIGHWAY AID PROJECTS

A. U.S. ARMY CORPS OF ENGINEERS PERMITS

1. Individual permits and PASPGP-6

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 Pennsylvania State Programmatic General Permit-6 (PASPGP-6). As a signatory to the Section 106 PA, the USACE becomes the lead federal agency for state-funded projects with a USACE permit and the delegation procedures of the Section 106 PA, and this handbook, are applied the same as for federally-funded projects.

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 can be found in Appendix B of the USACE's Pennsylvania State Programmatic General Permit-6

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 which are the regulations for processing of Department of the Army permits). 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 effects but outside of the USACE Permit Area will be coordinated between PennDOT and the State Historic Preservation Office (SHPO) under the State History Code.

Section 106 Coordination with USACE

The level of involvement of the USACE in the Section 106 process will depend on whether the project involves a non-reporting PASPGP-6, a reporting PASPGP-6 or an individual permit.

For all actions where activities are authorized under PASPGP-6 as non-reporting, USACE coordination will not be required unless the project is elevated to an Individual Permit.

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 and the permit to DEP will include a summary report from PATH. For state-funded projects involving a reporting PASPGP-6 or individual USACE permit, the USACE will become involved in the Section 106 process at points described in the Section 106 PA, to which the USACE is a signatory (e.g., resolving adverse effects, controversial projects, or where any Tribe/Nation seeks to consult directly with the lead federal agency). Pursuant to the Delegation PA, FHWA is the lead federal agency for projects with FHWA funding and the USACE accepts the Section 106 documentation as meeting their Section 106 responsibilities.

B. HIGHWAY OCCUPANCY PERMITS

Highway occupancy permits (HOP) are issued by PennDOT under the provisions of Chapter 441 of the PA Code 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. In most cases, there is a high volume of HOPs issued by PennDOT and little associated potential to affect historic properties, so the SHPO 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 the SHPO for its review via PA-SHARE, providing all required information and appropriate

attachments, including mapping of the proposed location, photographs of the proposed location, copies of proposed plans, and a project narrative including any proposed ground disturbance. The SHPO may ask the applicant to evaluate previously unidentified buildings, structures, objects, and/or districts within the proposed area. The SHPO will provide a written response to the applicant within 15 days of this initial notification and copy the appropriate PennDOT district.

If an existing NRHP eligible or listed archaeological site, or a location having high potential for an NRHP eligible archaeological site are located within the project's area of ground disturbance, the SHPO may ask the applicant to conduct an archaeological survey. The SHPO may ask the applicant to evaluate previously unevaluated sites in the area of ground disturbance for NRHP eligibility and to seek the concurrence of the SHPO.

If a NRHP or listed building, site, structure or district will be affected and the effect is adverse, the SHPO may request additional consultation on measures to avoid adverse effects, minimize effects, or mitigate where avoidance is not possible. The SHPO will respond within 30-day time frames pursuant to the State History Code MOU, PennDOT's Cultural Resources Section Manager will be copied on all correspondence related to potential adverse effects and invited to participate in any consultation to resolve adverse effects.

C. MULTI-MODAL PROJECTS

Multi-modal projects are subject to the State History Code. The applicant is responsible for coordination with the SHPO related to compliance with the State History Code. The District CRPs may be asked to provide guidance to sponsors and/or the Districts. For further information on the completion of Multimodal environmental documentation, refer to PennDOT's Guidelines for Use of the Multimodal Transportation Fund Grant Environmental Document

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Chapter 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.

A. DOCUMENTATION FOR ABOVE-GROUND HISTORIC PROPERTIES

Above-ground historic property reports and forms prepared for PennDOT projects should be consistent with Pennsylvania State Historic Preservation Office (SHPO) 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.

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 a Historic Context Report (see [Chapter VII](#)). Minimal report requirements are:

- SHPO Review #
- 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 HRS records are needed to determine eligibility. 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, the SHPO 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:

- SHPO Review #
- 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. Historic Resource Survey Data Entry Record

Entry of Historic Resource Survey (HRS) data records should be in accordance with current administrative guidance for data entry into PA-SHARE (kept in the “Cultural Resources” folder on PennDOT’s internal “P” drive). NRHP Bulletins should also be consulted for how to research properties and how to evaluate properties according to National Register Criteria (see [Chapter VII](#) for more information). HRS data entry records may be associated with an Identification and Evaluation Report (also known as an Historic Resource Survey and Determination of Eligibility Report) although the HRS data records will still be entered into PA-SHARE. Important considerations to keep in mind include the following:

- Data Entry Records 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.
- Data Entry Records, 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).
- Data Entry Records 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.

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

Reports may be combined with an Effect Report under certain conditions. Eligibility Reports must include the following:

- SHPO Review#
- 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 the SHPO record 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
- 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 HRS record(s)
- Bibliography
- List of preparers and their qualifications
- Link to PATH copies of HRS records, and/or list of PA-SHARE numbers for HRS data entry records, including new HRS records. [The HRS will be electronically entered into PA-SHARE. Copies of HRS records should not be included unless requested by the CRP].

5. Determination of Effect Reports

Effect Reports may sometimes be combined with Identification and Determination of Eligibility Reports. Effect Reports, when needed, must include:

- SHPO Review# 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. If a separate document considering rehabilitation was produced, reference the document and recommendations.) 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; again, this should not include copies of HRS record(s).
- 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 the SHPO, 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.

NOTE: The report should not duplicate all the narrative text from the HRS records in the body of the report. 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.

- Qualifications of researchers.

6. Historic Bridge Rehabilitation Analysis

A [Historic Bridge Rehabilitation Analysis](#) 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 recognized by AASHTO for rehabilitation in conjunction with a person or person's meeting the Secretary of the Interior's Standards for Historian or Architectural Historian. The preparer should coordinate with the CRP to ensure concise but thorough documentation. Other readily available documents, e.g., eligibility reports, can be referenced.

The analysis should consider the following:

It is important that the analysis be based upon a defensible purpose and need statement that takes into account the requirements of Section 106. The purpose and need statement must also be consistent with the NEPA purpose and need. Guidance on preparing purposes and need is available in [Publication 319](#).

When the CRP requests a Historic Bridge Rehabilitation analysis report, the report should include the following:

- Location 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 that 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 ability of the bridge to be rehabilitated to meet the purpose and need of the project while also retaining the bridge’s character defining elements in consideration of the Secretary of the Interior’s Standards for Rehabilitation. The analysis should consider whether the bridge can be made adequate for the intended use of the bridge without adversely affecting the characteristics which make the bridge eligible for listing in the National Register. 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 or increasing the height/clearance (as needed relative to the purpose and need) to the degree they are feasible; consider the effect of widening or increasing the clearance 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 the 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 the underlying principles of “Feasibility” and “Prudence” as defined in the AASHTO publication Guidelines for Historic Bridge Rehabilitation and Replacement. Cost is one of those underlying principles. The rehabilitation evaluation is produced primarily for purposes of Section 106, but should anticipate the ensuing 4(f) discussion. From a 106 perspective, our goal is to balance costs, including the costs of long-term maintenance, against the nature and degree of historic significance. That discussion directly feeds into the 4(f) analysis.

- 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/repared or have to be replaced entirely).

- Appendix Items

- Relevant previous correspondence (SHPO, 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 and external distribution of inspection reports is generally not Department policy.

B. DOCUMENTATION FOR ARCHAEOLOGY

Archaeological reports and forms prepared for PennDOT projects should generally be consistent with the SHPO 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. All archaeology reports should be posted to PATH, regardless of if they are for the SHPO and consulting party concurrence or not. Archaeology reports that have sensitive site information should be uploaded to PennDOT's EPDD SharePoint site, which is accessible by the SHPO, FHWA, and the Tribes and Nations. In these instances, the report abstract should not have specific site location information and should be included in the PATH finding of effect submittal. Submittal of paper copies of draft reports may be requested by the SHPO, for ease of review. Please note that final copies of reports will be submitted electronically.

1. PASS Forms

The Pennsylvania Archaeological Site Survey (PASS) form is no longer a separate paper or electronic form. The PASS data is now entered directly into the SHPO's PA-SHARE (see the SHPO guidance for more information). Once entered in PA-SHARE, a pdf copy can be downloaded for inclusion in the archaeological report. For each successive phase of archaeological investigations at a site, the PASS information 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:

- SHPO Review # (if available)
- Project information including County, SR, Section, and name of project
- A USGS map showing the location of the project
- A map of the project APE showing the location(s) of the borings or trenches
- USDA Soil Survey information and soil profiles that represent the range of variability within the APE
- A description of the landform(s) and soils within the APE, and general environmental background which should include drainage and hydrology of local region, land use history, and climate history
- A discussion of soil formation processes

- A discussion on the age of the soils
- Photographs of the APE
- Testing Methodology
- A statement of archaeological potential, when geomorphology is done to assess disturbance or potential for archaeological sites
- Conclusions and Recommendations
- References Cited

3. Predictive Model Report

Since the development of the pre-contact statewide archaeological predictive model, predictive model reports will not be commonly produced. In situations where a predictive model report is needed (e.g., a large EIS-level project with multiple alternatives), report should include the following:

- SHPO Review# (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 pre-contact history of the study area
- A description of the predictive model(s) *Predictive models must be developed for both pre-contact and historic archaeological sites
- The variables used to develop the model(s)
- Maps of the study area that indicate probability for both pre-contact and historic archaeological sites
- A comparison of project alternatives (if alternatives have already been developed)
- A proposed method for testing the selected alternative
- SHPO report summary form

In addition, for projects that have more than 50 acres of earth disturbance or are longer than 15 linear miles, the SHPO requires the completion of their Statewide Pre-contact Probability Model Testing Methodology Form.

4. Archaeology Sensitivity/Phase IA Report

The Archaeology Sensitivity/Phase IA Report should include the following:

- SHPO Review# (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 effects 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 pre-contact 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 pre-contact sites
- If geomorphological and/or archaeological testing is recommended, the proposed method of testing.
- SHPO report summary form

5. Record of Disturbance Form

The SHPO's Record of Disturbance Form found on their website is used when the APE is found to be completely disturbed as determined via archaeological investigations. 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 found on the SHPO's website is used when an archaeological survey is conducted but no archaeological sites are identified. 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 results in the identification of sites within the APE. The report should include the following:

- SHPO Review # 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 effects including size of the APE, land use, and area(s) of disturbance
- Results of the background research including a pre-contact and historic context *Copies of historic maps showing the APE should be included if available. A statement on the potential for historic and pre-contact 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
- SHPO 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:

- SHPO Review # 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 effects including size of the APE, land use, and area(s) of disturbance

- Results of the background research including a pre-contact and historic context *Copies of historic maps showing the APE should be included if available. A statement on the potential for historic and pre-contact 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 NPS' Bulletin 36: Guidelines for Evaluating and Registering Archaeological Properties (2002), found on their website
- 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, such as geotextile and fill or HDPE matting, 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.
- SHPO 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.

- SHPO Review # 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
- SHPO 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 and 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

- *PennDOT Section 106 Effect Finding Form*. Links to any completed reports or HRS records should be provided either in the effect finding form or in the PATH record.
- Attachments, as appropriate, to support the finding. An Effect Report may also be prepared for findings of No Adverse Effect. An effect Report is generally only prepared for above ground historic properties.

2. Adverse Effects

- *PennDOT Section 106 Effect Finding Form- Attachment B-Above Ground Historic Properties Effect 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, PennDOT uses PDF format for correspondence. However, for documents that require long-term curation or

archiving, PennDOT will use the PDF/A standard. The following documents must be provided for archival storage:

- National Register Nominations
- HABS/HAER Documentation
- 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 Reports

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Chapter XIII. EMERGENCIES AND LATE DISCOVERIES

A. FHWA FEDERAL EMERGENCY RELIEF-FUNDED PROJECTS

Emergencies are discussed in Section IX of the Section 106 PA. Emergency projects are defined in the Section 106 PA as those projects defined in 23 CFR 668.103 and 23 CFR 668.109 and eligible for Emergency Relief (ER) funds.

Section IX is applicable when a state of emergency is declared by the President of the United States or the Governor of Pennsylvania. Section 106 is not waived under any state or federal emergency declaration. The ACHP regulations do, however, exempt immediate rescue and salvage operations conducted to preserve life and property from the provisions of Section 106. Projects that will utilize funds from FHWA's Emergency Relief Program qualify for expedited Section 106 review pursuant to the interagency funding agreement with the SHPO. 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 and the SHPO will receive information concurrently.

1. Type 1 Emergency Activities

Type I emergency activities fall into one of two categories. The first category is immediate rescue and salvage operations conducted to preserve life and property. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)].

The second category of Type I emergencies are repairs to existing infrastructure, and other activities necessary to restore or maintain essential traffic, minimize the extent of damage, and/or protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices. Appendix A, item B9, of the Section 106 PA exempts these activities.

Therefore, all Type I emergency activities are either exempt from Section 106 or exempt pursuant to Appendix A.

Type I emergency activities must be completed within 180 days of the event and are 100% federally-funded.

If possible, where there are immediate threats to life or property, the CRP will visit the project site and provide advice on measures to avoid adverse effects, or to minimize or mitigate adverse effects. The CRP shall work closely with the work crews to ensure all reasonable measures are implemented. Where Type I emergencies result in an adverse effect and/or the flood/event resulted in the destruction of an historic property documentation of what occurred and what, if

any, minimizing or mitigating actions were taken, shall be provided to FHWA and the SHPO no later than 45 days after the field view.

2. Type 2 Emergency Activities

Type 2 emergency activities are permanent work activities and defined as all other emergency projects not covered under Type 1 where the repair or reconstruction work will be commenced within two years of the declaration, as specified under the emergency repairs provisions of the Federal-Aid Highway Program (Title 23 United States Code Section 125). Pursuant to Title 23 CFR 771.117(c)(9), this includes the repair, reconstruction, restoration, retrofitting or replacement of any road, highway, or bridge in operation or under construction when damaged, and the action occurs within the existing right-of-way, and in a manner that substantially conforms to the preexisting design, function, and location as the original.

If the NEPA approval for an emergency project includes a permanent repair under CE 1a item 9, and is otherwise not exempt, PennDOT may request an expedited review by the SHPO. Notifications will clearly indicate that the project is an emergency action pursuant to a declared emergency. PennDOT's Cultural Resources Section manager will negotiate a review time that is mutually agreeable to both parties; such negotiation can include groups of projects. PennDOT will make reasonable effort to consult with the public and property owners.

B. FEMA SECTION 106 COMPLIANCE IN FEDERALLY DECLARED DISASTERS

In the event of a federal disaster declaration, the Federal Emergency Management Agency (FEMA) may provide direct federal assistance and/or funding to PennDOT under its applicable programs.* In such cases, FEMA fulfills its Section 106 compliance responsibilities in the Commonwealth of Pennsylvania under the *Programmatic Agreement Among The Federal Emergency Management Agency, The Pennsylvania State Historic Preservation Officer, The Pennsylvania Emergency Management Agency, and The Seneca Nation of Indians of New York 2018* (FEMA PA 2018), which is a tailored version of FEMA's Nationwide Prototype Programmatic Agreement (FEMA PPA). The FEMA PPA was developed by FEMA Headquarters in consultation with the ACHP, SHPOs, and other interested parties.

*Note: 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.

1. Federal Disaster Declaration Procedures

After a federal disaster declaration in Pennsylvania, FEMA must undertake an Environmental and Historic Preservation compliance review (EHP). FEMA shall reach out to PennDOT Cultural Resources to establish communications and ensure a streamlined project review whenever possible.

FEMA's EHP compliance review process is conducted with the following review criteria and considerations for its activities and programs:

1. Not the type of activity with potential to affect historic properties;
2. Activity meets Programmatic Allowance(s) in the FEMA PA (similar to the exemptions in the Section 106 PA);
3. Activity requires consultation because there is no allowance under the FEMA PA; and
4. Standard Section 106 Review when/if there is no FEMA PA with the SHPO (such as due to PA expiration).

2. Expedited Review for FEMA Funded Emergency Undertakings

As detailed in § II.B.1 of the FEMA PA 2018 and referenced above under Criterion 3, FEMA has the authority to approve emergency undertakings (as defined in 44 CFR § 206.201(b)) that occurs during the defined incident period, including work already completed, in response to an immediate threat to human health and safety or property. Pursuant to 36 CFR § 800.12(d), FEMA may also conduct expedited review of emergency undertakings within thirty (30) days of the beginning of the incident period.

3. Lead Federal Agency

The FEMA PA 2018, § I.A.4, authorizes FEMA to fulfill its Section 106 responsibilities and those of other federal agencies that designate FEMA as the lead federal agency pursuant to 36 CFR § 800.2(a)(2) with appropriate notification to the other Signatories and the ACHP regarding undertakings that fall within the scope of the FEMA PA 2018. FEMA is also authorized to recognize another federal agency as the lead federal agency for specific undertakings as appropriate.

4. Reducing Redundancies in Section 106 Consultation

As stipulated under § I.A.5 of the FEMA PA 2018, when another federal program or federal agency has concluded Section 106 consultation review and approved an undertaking within the past five years, FEMA has no further requirement for Section 106 review. This allowance is contingent on confirmation that the scope of work is consistent with that which was subject to the previous Section 106 consultation.

As per correspondence between PennDOT Cultural Resources and FEMA EHP in October 2020, in the instance that PennDOT has completed or substantially fulfilled standard Section 106 compliance prior to FEMA's involvement in an undertaking, FEMA may adopt and/or utilize DOEs, findings, Section 106 consultations, and other studies previously approved within the past five years. These materials are generally available to the public, including FEMA, through PATH. The PennDOT CRPs will work with the project team to include links to these materials in the initial FEMA project application to PEMA. In the event links are not shared with PEMA, FEMA EHP staff has access to PATH and will locate the project Section 106 records. The CRPs and FEMA EHP will maintain contact to ensure that any inaccessible or additional information that is required may be provided in a timely manner.

PennDOT Cultural Resources and FEMA EHP staff are working together to further streamline the Section 106 process as related to disasters in Pennsylvania through increased communications, identifying inefficiencies, and reducing redundancies in the compliance process. This is part of a larger effort to continually expedite and improve program delivery in Pennsylvania.

C. PATH AND PUBLIC INVOLVEMENT

PennDOT uses PATH to inform and involve the public on emergency actions it is undertaking. PennDOT will complete 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 Appendix A Type 1 exemption or FEMA PA programmatic allowances category. In the BRPA, these are being noted as exemptions, which also populates PATH.

Non-exempt or non-programmatic allowance activities will need to be coordinated with the SHPO, lead federal agency and/or FEMA. Generally, the Section 106 process is followed, although in a compressed time frame. These projects will be entered as PATH projects, and Section 106 steps and documentation will be posted on the 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.

D. 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 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 SHPO, 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 24 hours or less.

1. Decision: Immediate Action is Needed for Safety of Life or Property

- i. 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.
- ii. The DE, ADE, or someone acting on their 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 they know that the involved resource has been previously determined not eligible.
- iii. The District CRP should inform the SHPO of the actions taken if it affected an eligible or listed resource or a resource 50 years old or older whose eligibility is unknown.
- iv. 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.
- v. If the District CRP determines that no consultation with PHMC is necessary (i.e., no eligible or potentially eligible resource is affected), the CRP should inform the DE/ADE/person in charge of handling the emergency.

2. Decision: Immediate Action is NOT Needed

- vi. The DE, ADE, or someone acting on their behalf determines if 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, they should then notify the Environmental Unit and/or the District CRP and provide a required timeframe for response time needed from the SHPO. If none is provided, the default is seven (7) days.
- vii. The CRP will determine whether an historic resource is being affected and whether it is necessary to consult with SHPO. If no coordination is needed, the CRP will inform the DE/ADE.
- viii. If the CRP determines that it is necessary to consult with the SHPO, the CRP will phone the SHPO's Environmental Review Division Manager and inform them of the emergency, the proposed actions, and the response time needed; the CRP will also provide this information by memo to the SHPO (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.
- ix. If no response is received from the SHPO within the specified timeframe, then the CRP should provide guidance to the DE/ADE/responsible person.

E. 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 Section Manager, and the SHPO. Federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery or the effected property will also be notified. FHWA/USACE 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 [Project Office Manual](#) (B.4.13).

On certain 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 the SHPO, the lead federal agency, 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 Section Manager, the SHPO, 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.

For "Unanticipated Discoveries," defined as previously unidentified archaeological resources or above-ground historic properties that were previously believed to be unaffected by the project but may now be affected due to changes in project design or implementation, the following notification procedure will be followed. Note: If there is a project-specific agreement document, stipulations in that document will supersede the following guidance.

1. Construction will cease immediately in the immediate area of the discovery to avoid disturbance. The District is to notify the CRP Archaeologist who will notify the Cultural Resources Section Manager and lead federal agency of the discovery. Construction activities will continue in the subject areas after the District receives approval from the CRP Archaeologist and lead federal agency.
2. The District is responsible for stabilizing and protecting the area of the discovery.
3. The District, in consultation with the Cultural Resources Section Manager and the lead federal agency, shall arrange to have the District's CRP visit the site within 48 hours of the discovery to determine the nature of the archaeological resources.
4. The SHPO and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery will be notified within 72 hours of the discovery by the CRP Archaeologist. The SHPO and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery shall be provided an opportunity to meet in the field with the lead federal agency, Office of Chief Counsel, Real Property Division (see #5 as applicable) and the District to assess the discovery and consult on the plan of action.
5. The CRP shall develop a plan of action based on consultation with the District, the Cultural Resources Section Manager, the SHPO, the lead federal agency, and federally recognized Tribes and Nations that may attach religious or cultural significance to the discovery. If the late discovery involves human remains or a grave (see below), contact the Office of Chief Counsel, Real Property Division

early in the process of developing the plan, for assistance in obtaining any necessary court orders. Although a court order is not required in some circumstances, the Department normally seeks a court order to disinter and rebury human remains.

6. Within 96 hours of the discovery the CRP shall provide the SHPO and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery with the plan of action for review and comment. The lead federal agency may also notify the Advisory Council on Historic Preservation (ACHP) and request interim comments within 48 hours.
7. If the SHPO and federally recognized Tribes/Nations that may attach religious or cultural significance to the discovery decline to meet or do not comment on the plan within 48 hours of receipt, the lead federal agency shall proceed with the implementation of the plan of action taking into consideration, to the extent feasible, the comments of the ACHP.
8. The Project is to prepare a work order to address time and cost for the effects of the "Unanticipated Discoveries."

Human Remains, Grave Monuments, and Grave-Related Materials/Artifacts:

The policy of the Department is to treat all identified human remains, grave monuments, and grave-related materials/artifacts in a respectful and responsible manner that takes into consideration scientific data and cultural values. When feasible, human remains, grave monuments, and grave-related materials/artifacts shall be preserved in-place rather than excavated for study or reburial. State law (9 P.S. §8) prohibits new highway alignments through cemeteries or burial grounds. Refer to Publication 378, Right-of-Way Manual, Appendix C, Section C.01.E for discussion of legal issues concerning acquisition of cemetery land.

Human remains, potential human remains, burial-related monuments, and other grave-related items may be discovered on a project during either design or construction. If a known cemetery or burial ground is in the immediate vicinity of the project area, it is the responsibility of the CRP and Environmental Manager to establish a plan of action that is sensitive and respectful to the human remains that are contained within. If monuments will be temporarily moved prior to construction to prevent inadvertent damage, a Monument Conservation Plan would also be required (NPS Preservation Brief 48 should be used as a guideline [2016]). This plan would document the pre-construction location and condition of the monuments, provide recommendations on moving and re-setting and document post-construction condition. A copy of that plan of action must be reviewed by the construction inspector, assistant construction engineer, and contractor prior to start of work, and a copy must be kept in the construction trailer until the completion of the project. It is recommended that the district CRP attend the pre-construction meeting.

The remainder of this guidance is for circumstances where human remains have not been anticipated within the project area.

1. If human remains or likely human remains, grave monuments, or grave-related materials/artifacts are discovered on a project site, work shall cease immediately, and the vicinity of the discovery shall be secured both against the elements and against potential vandalism. The items should also be shielded from public view.
2. The contractor shall notify the construction inspector, who shall then contact the District Environmental Manager and/or the CRP archaeologist with the following information:

Name of project

Name and contact information of construction inspector

Date and time of the discovery

Nature of the discovery, e.g., what was located

Whether construction has been stopped and the site secured

3. If the human remains appear to be recent, the State Police shall be notified. Otherwise, the county coroner shall be notified. Note: the coroner will be the one responsible for “releasing” the remains if they will be moved. Otherwise, a court order may be needed. The list of current county coroners is available at:
<http://www.pacoroners.org/cms/members/>.
4. The Environmental Manager and/or assigned CRP archaeologist shall notify the Project Manager, PennDOT’s Office of Chief Counsel (where appropriate), the lead federal agency, the SHPO, and any federally recognized Tribes/Nations with an interest in the area. With specific regard to federally recognized Tribes/Nations, relevant Tribes/Nations shall be notified unless the remains are known to be recent. The Environmental Manager is responsible for keeping a call list in the District Office, which is to be maintained by the CRP Archaeologist. A copy of the Discovery of Human Remains Checklist (attached) shall be provided to the lead federal agency within 24 hours of discovery. Most funeral directors and some coroners have storage facilities where remains can be stored until reinterment.
5. If remains will be disinterred/reinterred, a qualified funeral director will need to be contacted. PennDOT should prepare a record of the removal indicating the date of removal and the site or place to which the removal was made. Copies of those records should go to the SHPO, local historical/genealogical societies, other concerned parties, and the Office of Vital Records.

Additional guidance can be found in [National Register Bulletin 41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places*](#) and the SHPO [*Guidelines for Archaeological Investigations in Pennsylvania*](#).

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Chapter 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.

A. FEDERAL AND STATE LAWS, REGULATIONS, AND GUIDANCE

1. 36 CFR and Section 106 of the National Historic Preservation Act

Federal regulations (36 CFR 79), found on the NPS website, 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 79.4(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 on their website, “Recommended Approach for Consultation on Recovery of Significant Information From Archaeological Sites”, regarding the treatment of archaeological sites and artifacts. When data recovery is undertaken as a resolution of adverse effects, the 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 SOI’s *Standards and Guidelines*.

The SOI *Standards and Guidelines* 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 (see 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 federally owned lands (e.g., Bureau of Land Management, National Park Service, or United State Forest Service) and federally recognized Tribal lands. There are no federally recognized Tribal sovereign lands in Pennsylvania. NAGPRA does not specifically apply to FHWA-aid or USACE permitted projects, unless those projects happen to occur on lands managed by a federal land agency. However, if burials or sacred objects are found during an archaeological excavation conducted under Section 106 of the NHPA, the lead federal agency is obliged to consult with the Tribes and Nations concerning the treatment of the remains or sacred objects. FHWA/USACE will consider the views of the Tribes and Nations, particularly regarding burials or objects considered sacred to the Tribes and Nations.

B. DISPOSITION OF ARCHAEOLOGICAL ARTIFACTS AND RECORDS FROM COMMONWEALTH LAND, PRIVATE PROPERTY, AND 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 or a PennDOT office. It is the responsibility of the District Archaeologist to ensure that archaeological collections are properly submitted 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 of Transfer 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 PHMC's Accessions Form and Gift Agreement Form available on their website. PHMC's 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 and 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 other federal agency, as appropriate) and the Cultural Resources Section. FHWA 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 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 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 warrant curation, which is dependent on the context in which artifacts are recovered. For example, artifacts that represent random roadside discard should not be sent to PHMC for curation. Archaeological sites are defined using the [SHPO's Site Identification Criteria](#) (September 2021). 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.

A PHMC Accession Form and 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 gift agreement, the artifacts must be returned to the owner. The property owner must sign a Rejection of Gift Agreement Form. The artifacts should not be returned until a report is accepted by the SHPO 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 Excavation (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 Section and FHWA (or USACE), the SHPO 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 and Nations have no legal claim to artifacts or burials, Section 106 requires consultation with Tribes and 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. For projects where

artifacts have already been curated and a property changes ownership, PennDOT should work with PHMC if there is a dispute over ownership of these artifact collections. Contact the State Museum for guidance on these projects.

4. Temporary Construction Easements

Temporary easements that are needed during construction are part of the project's area of potential effects. 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 and HDPE geomatting.)

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 to the State Museum within three months of transmittal of the final reports to the SHPO, unless another timeframe is specified in a MOA, MOU, or LOA or LOU.

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 pre-contact 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 SHPO'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.

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 SHPO's Review number, the archaeological site name and number, the number of boxes being sent, and which *Curation Guidelines* (what year) were followed to prepare 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. In a situation where a Pennsylvania agency like the Department of Conservation and Natural Resources (DCNR) owns a collection, the State History Code, under Section 506, states that it is the responsibility of the Pennsylvania Historical Commission to oversee the preservation and protection of state-owned archaeological resources. In this example case, the District Forester of the State Forest would format a Letter of Transfer on their agency letterhead to the State Museum of Pennsylvania, Section of Archaeology for permanent curation and include an inventory of the recovered collection.

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 labeled collections boxes 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 ensure a binding, legal document that cannot be challenged later. The property deed should be reviewed by the District or the consultant to ensure that all of the legal parties with ownership rights are identified.

c. Box Lot Inventory

The Box Lot Inventory summarizes the contents, box number(s), catalog number range, and any particular conservation issues of the artifacts contained in each box of the collection. A template is provided in Figure 6 of the 2006 State Museum *Curation Guidelines*.

d. Packing List

The Packing List details collection information and includes information like which State Museum *Curation Guidelines* were followed, the catalog number range for the collection, and whether duplicate and original documentation is provided.

e. Checklist for Collection Submission

This checklist must be completed and included in the State Museum paperwork. Like the Packing List, the Checklist ensures that the CRP or consultant has included all of the required documentation and has prepared the collection to the most recent curation standards. Included in the Checklist is the requirement that two hard copies and one electronic copy of the Artifact

Inventory Table be submitted with collection documentation. Specifications on how to create and complete the Table is included in the Guidelines.

f. A Copy of the Final Archaeology Report(s)

One bound 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.

g. Original and Copy Set of Project Documents

The original set of field forms, field notes, field maps, and other project documentation as described in the 2006 *Curation Guidelines* must be included as well as a copy set of the same documents. The duplicate record set, stored in separate folders than the originals, are housed in an off-site facility for preservation purposes. All documentation folders must be labeled by site number, site name (as per PASS files), and content. Clearly label duplicate records as duplicates.

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 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 State Museum 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 landowner 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. Neither the consultant nor PennDOT can require that the property owner sign the Gift Agreement or a letter rejecting the Gift Agreement. If a property owner refuses to sign, the District Archaeologist should write a memo stating the dates we talked to the property owner and indicating that the property owner refused to sign. The memo should also indicate the date the artifacts were returned. The artifacts should be returned accompanied by a cover letter with an attached, dated inventory to avoid any confusion in the future.

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. State Museum staff can provide additional information concerning loan agreements.

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. 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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Chapter XV. QUALITY ASSURANCE/ QUALITY CONTROL

Under the Section 106 PA, PennDOT Cultural Resource Professionals (CRPs) have been delegated responsibilities for a large part of the Section 106 process. To ensure that these responsibilities are met, a Quality Control and Quality Assurance program has been established. Section 106 is a process, and a goal of this process involves coming to a decision and providing solid documentation to support that decision. To achieve that goal, the program is best served by acquiring an adequate number 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 (i.e., PennDOT District environmental staff) and training is delegated authority to make exemptions under Section 106 on behalf of the lead federal agency and PennDOT. That authority is affected 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 the DD's exemption is not subject to review, except as part of a Quality Assurance program. Quality Control 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.

1. Achieving Delegation

Delegation to a DD is given by the Cultural Resources Section Manager, upon completion of a training program (Table 2). Training is required from three elements: an introductory course in Section 106 policy and practice; PennDOT training on the application of the Section 106 PA and associated Handbook; and SHPO-provided training.

The first element – an introduction to Section 106 – can be completed by taking the PennDOT-sponsored course: *Section 106 Principles and Practice (Intro 106)*, which is offered periodically 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 National Preservation Institute (NPI): *Section 106. An Introduction*. The Advisory Council on Historic Preservation (ACHP) also offers basic Section 106 training in a classroom or webinar format.

The second element – the application of the Section 106 PA and associated Handbook is offered periodically by Central Office via webinar or by appointment with/ scheduled by one of the Cultural Resources Professionals (CRPs) in the District Office.

The third element – *SHPO Cultural Resources Training* – is offered by the SHPO generally every other year.

For a new District Designee to obtain delegation, the first two elements must be completed. Within one year of delegation, or as soon thereafter as offered by the SHPO, the new District Designee must complete the third element – SHPO Cultural Resources Training to retain that delegation.

Table 2 - District Designee Training Requirements – New Certification		
Element 1	Element 2	Element 3
Intro to Section 106	Application of the PA and Handbook	SHPO Cultural Resources Training
One of the following: <ul style="list-style-type: none"> • NPI: Section 106: An Introduction • Section 106 Principles and Practice (Intro 106) • ACHP Section 106 Essentials (online training) 	Overview with District or Central Office Cultural Resource staff	Taken within 1 year of delegation

2. Maintaining Delegation

In order to retain delegation, the DD must attend refresher training every two years. The refresher training will be offered annually by PennDOT, often with the participation of the SHPO and typically in association with an Environmental Managers meeting. The refresher will address changes to guidance, regulations, and delegated responsibilities as well as current topics. The training will be made available as a webinar in addition to any in-person offering.

B. STAFFING- MINIMUM QUALIFICATIONS

There is only one nationally recognized standard for professional qualifications for archaeologists and architectural historians – the *Secretary of Interior Standards for Professional Qualifications* http://www.nps.gov/history/local-law/arch_stnds_9.htm. 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* 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 pre-contact archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the pre-contact 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.

Note that the minimum standards from the Secretary of the Interior are more restrictive than those identified in the available state job classifications: historic preservation specialist or museum curator, archaeology 2. Under non-Civil Service hiring procedures, the MET (minimum education and training) 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 District CRP within PennDOT also must meet these *Secretary of Interior Standards*.

PennDOT CRPs, and consultants under management contract, who have the appropriate minimum qualifications and training are delegated authority to make Section 106 decisions on behalf of FHWA, the USACE and PennDOT (Table 3):

Element 1	Element 2	Element 3
Section 106 course	Application of the PA and Handbook	SHPO Cultural Resources Training
One of the following: <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) 	Cultural Resources Handbook Basics (offered by Central Office)	Training by SHPO staff on History Code, PA-SHARE, relevant historic contexts, and other topics
	•	

Delegated authority means that the CRPs finding is generally 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, 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, who is a Department employee, is given by the Cultural Resources Section Manager upon consultation with the CRP's mentors and other staff familiar with that individual's work. Upon delegation, FHWA is notified by the Cultural Resources Section

Manager. Delegation is sometimes achieved/provided 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, delegation to review cultural resources technical documentation and make a finding of eligibility or effect based on the recommendations in the document(s), delegation to resolve adverse effects in coordination with the lead federal agency, and delegation to consult and coordinate with federally recognized Tribes/Nations.

C. TRAINING TOWARD DELEGATION

The training program for CRPs consists of four levels (Table 4). Each level is met by a combination of education acquired through formal courses, self-taught instruction, one-on-one tutoring, and experience. Separate tracks are constructed for archaeologist and architectural historian.

Table 4 -Training Levels		
Level	Description	Time Frame
I	Requirements for Hire	N/A
II	Basic Competency	4-6 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 *Secretary of Interior Standards for Professional Qualifications* (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 pre-contact history; 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 four to six months of hiring.

Basic competency also allows the CRP to make findings under the Section 106 PA. In order to meet the terms of training for the Section 106 PA, the CRP must have a basic Section 106 course and an overview of the Section 106 PA and its application. Within 1 year of delegation, the CRP must take the SHPO Cultural Resources Training, or as soon thereafter as offered by the SHPO.

In order to retain delegation, the CRP must attend annual refresher training. This will typically be available as part of a joint PennDOT and the SHPO staff meeting . Consultants under management contract will be offered a webinar when PennDOT and the SHPO elect that the refresher training or joint meeting is staff only. Every other year, the CRP will need to attend a minimum of two (2) PA SHPO and PennDOT approved sessions at the Statewide Conference on Heritage (when held) or other conference or training relevant to historic preservation, as determined/documented by the Cultural Resources Section Manager.

The Section 106 PA also includes the following provision: Whenever major changes to 36 CFR 800 become effective, or the ACHP updates relevant guidance, or issues relevant program comments, District Designees and CRPs will participate in training on the new regulations or guidance within a year of when it goes into effect.

a. Archaeologist

Education

A series of PennDOT-sponsored courses should be completed in the first six to nine months (Table 5). 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 5 - Educational Courses	
Level	Archaeology
II	Section 106 PA - Basic Course Training 4(f) Handbook training NEPA online training, or equivalent CEES Training OSHA Basic Course

Experience

The initial period of employment at PennDOT will be spent in Central Office with the Cultural Resources Section, prior to assignment out to the District Office. Of this time (estimated at two to three weeks) a day will typically be spent working closely with the SHPO staff. At least a half day will be spent at FHWA.

Within the Cultural Resources Section, the skills to be emphasized are:

- Reviewing technical 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 SHPO;
- 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 the statewide archaeological predictive model;
- 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;
- Entering and managing project findings, using PATH;
- Coordination and consultation with Federally Recognized Tribes/Nations interested in the projects.

At the SHPO, staff will emphasize the following skills:

- Familiarity with the Pennsylvania Archaeological Site Survey (PASS) files;
- Familiarity with Archaeological Survey and Report Standards;
- Familiarity with PA-SHARE;
- Familiarity with previous research in the assigned Region;
- Reading and interpreting landforms;
- Understanding the SHPO 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 reports will be concurrent, with the new archaeologist working with their established team counterpart(s) 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. They 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 reports. On average, a trainee will achieve competence in the Section 106 PA after 10 findings.

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 30-40 projects.

The number of projects attended, reports reviewed, and applications of the Section 106 PA are estimates. These estimates may be increased or decreased depending on the prior experience of the new Archaeologist. Delegation will be given when the trainee can demonstrate the necessary skill sets.

It is anticipated that each new Archaeologist will assist the SHPO staff in reviewing technical reports from a SHPO perspective. Other anticipated duties will include completion of PASS forms, entry of PASS data into a database, research on regional pre-contact history, using contract reports and other references, and attendance at the SHPO 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 pre-contact history and history and the significance of archaeological sites.

At approximately three weeks, depending on previous training and transportation experience, 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 Section. 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 Cultural Resources Section Manager 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 Section 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 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 new Archaeologist should contact the Archaeology Supervisor and other CRPs for guidance on policy and issues related to projects. The Archaeology Supervisor will also conduct periodic conference calls to discuss issues of importance to the group. The CRPs will also participate in periodic meetings or workshops with the SHPO that will 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 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 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 historic preservation conference(s).

TABLE 6 - Educational Courses	
Level	Architectural History

II	Section 106 PA - Basic Course Training 4(f) Handbook training NEPA online training, or equivalent CEES Training OSHA basic Course
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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 two to three weeks), one day will typically be spent working closely with the SHPO staff. At least one half day will be spent at FHWA.

Within the Cultural Resources Section, the skills to be emphasized are:

- Reviewing technical reports, including Historic Resource Eligibility Reports, HRS records, Criteria of Effects Reports and work plans;
- Using the Section 106 PA, including background information research, field determinations, documentation, and coordination with the SHPO;
- 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 SHPO, staff will emphasize the following skills:

- Familiarity with the HRS files in PA-SHARE;

- 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 the SHPO 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 Architectural Historian 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, 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 findings.

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 above-ground resources. On average, a trainee will achieve competence in scoping field views after attending 30-40 projects.

The number of projects attended, reports reviewed, and applications of the Section 106 PA are estimates. These estimates may be increased or decreased depending on the prior experience of the new Architectural Historian. Delegation will be given when the trainee can demonstrate the necessary skill sets.

At the SHPO, it is anticipated that each new Architectural Historian will assist the SHPO staff in reviewing technical reports from a SHPO perspective. Other anticipated duties will include completion of HRS records, entry of HRS data into PA-SHARE, research on regional history, using contract reports and other references, and/or attendance at the SHPO architectural history eligibility meetings. At the end of the initial period, it is expected that the new Architectural

Historian should understand major trends in history and the significance of above-ground resources.

At approximately four to five weeks, depending on previous training and transportation experience, 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 Section (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 Cultural Resources Section Manager 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 Section 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 new Architectural Historian is encouraged to contact the Architectural History Supervisor and other CRPs for guidance on policy and issues related to projects. The Architectural History Supervisor will also schedule periodic conference calls to discuss issues of importance to the group. The CRPs will also participate in periodic meetings or workshops with the SHPO that will 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 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 CRP, 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 lead federal agency-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 7).

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 will be concurrent with the new CRP 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, it is expected that the new CRP will reach the point of being able to negotiate mitigation 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 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, to maximize flexibility when considering mitigation options.

Table 7 - Educational Courses		
Level	Archaeology	Architectural History
III	Design Manual 1 Environmental Commitment and Mitigation Tracking System (ECMTS) Training for Design 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

D. CONTINUED TRAINING- STAFFING

The cultural resources field is rapidly evolving. 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, Transportation Research Board (TRB) committees, regular review of current literature, and active presentation of PennDOT activities at conferences. Minimally, 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 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 Archaeology staff meetings; and,
- Participation in periodic meetings/ workshops with the SHPO.

2. Architectural Historian

Education requirements include the following:

- 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 Architectural Historians staff meetings; and,
- Participation in periodic meetings/ workshops with the SHPO.

E. 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, USACE or SHPO staff. As problems are raised, it is the responsibility of the Architectural Historian Supervisor and/or Archaeology Supervisor, in conjunction with the Cultural Resources Section Manager, 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 Cultural Resources Section Manager to seek resolution in providing better guidance, in consultation with FHWA, the USACE and the SHPO.

The primary means to address quality assurance of CRP decisions is through the Review and Monitoring provisions of the Section 106 PA. It is the responsibility of the Cultural Resources Section to produce an annual report of the use of the Section 106 PA to be reviewed by FHWA, USACE, the SHPO, and the Advisory Council on Historic Preservation (ACHP).

F. 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 and justifications that are made by the CRPs 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.

The following decision points should be shared with the consulting parties and the public in as expeditious a 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, the SHPO, and the lead federal agency 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 effects; 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 PATH. PATH is a [searchable database](#) of project decisions and supporting documentation that is open to the public.

Each CRP is responsible for posting decisions and keeping submittals current. Archaeological decisions and supporting documentation are the responsibility of the District's archaeologist; above-ground decisions are the responsibility of the District's Architectural Historian.

The following quality control measures are utilized to ensure that mitigation commitments are met:

- Mitigation commitments are put into contract provisions, as appropriate.
- Cultural Resources Mitigation commitments are logged and tracked through 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 will be entered as a separate mitigation commitment to be noted and tracked. Receipts from the State Museum for submitted collections will be considered documentation that a collection was submitted.

G. 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 reviewed by the project manager, the Environmental Manager, or the Cultural Resources Section (the CRP's supervisor and/or the Section Manager). In addition, since decisions are made on behalf of FHWA or the USACE, CRP decisions can also be reviewed by FHWA or USACE. 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 is reviewing or questioning 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 in conjunction with the Environmental Manager, may appeal the decision in writing to the CRPs supervisor and/or the Cultural Resources Section Manager, providing the justification for the appeal and the basis for an alternate decision. Project schedule concerns are not sufficient justification for an appeal.

In an effort to resolve the disagreement, the supervisor and/or Cultural Resources Section Manager shall meet with the Project Manager and/or the Environmental Manager, and the CRP who issued the decision. Should the Cultural Resources Section be unable to resolve the disagreement to the satisfaction of all parties, the Cultural Resources Section shall issue an opinion and provide a written justification within 30 days of the meeting. Within 30 days of that decision, either the Project Manager, Environmental Manager (where applicable), or the CRP may appeal the decision to the lead federal agency through the Cultural Resources Section Manager. The lead federal agency shall consult with PennDOT, and if necessary, the SHPO and/or other consulting parties to try to resolve the issue. If the issue cannot be amicably

resolved among the agencies, then the lead federal agency shall issue an agency finding within 30 days of meeting. That finding shall be communicated to PennDOT, the SHPO, and any other consulting parties involved with that particular project.

H. CONSULTANTS

Many studies are completed by consultants outside of PennDOT, so bringing consultants into the QC/QA fold is essential. There are tools that are currently being used to ensure quality 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.

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](#)).

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APPENDIX 1 - PENNDOT-FHWA-USACE-SHPO-ACHP SECTION 106 PROGRAMMATIC AGREEMENT

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE U.S. ARMY CORPS OF
ENGINEERS, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER AND THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION REGARDING
IMPLEMENTATION OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL AID HIGHWAY PROJECTS AND/OR HIGHWAY PROJECTS REQUIRING A
U.S. ARMY CORPS OF ENGINEERS PERMIT IN PENNSYLVANIA.**

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

WHEREAS, the U.S. Army Corps of Engineers (USACE) regulates discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States under section 404 of the Clean Water Act (33 U.S.C. § 1344) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) through a permit program (hereafter referred to as USACE Permits);

WHEREAS, PennDOT must obtain USACE Permits from USACE for regulated impacts to waters of the United States from its highway projects;

WHEREAS, PennDOT and the FHWA executed a programmatic agreement (2010 PA) regarding implementation of the Program in Pennsylvania on March 18, 2010, 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 Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) (Section 106) and amended the 2010 PA on December 14, 2017;

WHEREAS, the signatories to the 2010 PA, as amended, desire to replace the 2010 PA in its entirety with this Programmatic Agreement (PA);

WHEREAS, for federally funded projects, the Pennsylvania FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Program complies with Section 106 of the NHPA, as amended, and codified in the implementing regulations, 36 CFR 800, as amended (August 5, 2004), and is the Lead Federal Agency for federally funded projects;

WHEREAS, for wholly state-funded projects requiring a USACE Permit, the USACE Baltimore, Philadelphia, or Pittsburgh District Commander is the “Agency Official” responsible for ensuring that the USACE Permits in the State of Pennsylvania comply with Section 106 of the NHPA and is the Lead Federal Agency for federally permitted projects that do not involve federal funding;

WHEREAS, the FHWA and the USACE recognize that they have a unique legal relationship with Tribes and Nations set forth in the Constitution of the United States, treaties, statutes, and court decisions, and, therefore, consultation with a Tribe or Nation must recognize the government-to-government relationship between the federal government and Tribes and Nations;

WHEREAS, in the development of this PA, the FHWA and the USACE have jointly contacted Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 1

the following federally recognized Tribes and Nations with ancestral ties to Pennsylvania, which may attach religious or cultural significance to properties in Pennsylvania, provided them the opportunity to consult and to concur with this PA, and none have elected to participate as concurring parties: Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; St. Regis Mohawk Tribe; Seneca-Cayuga Nation; Seneca Nation of Indians; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; and, Tuscarora Nation;

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

WHEREAS, the FHWA and the USACE have invited other parties to participate in the development of the PA pursuant to 36 CFR § 800.2(c)(5), and the following parties participated in the consultation and have been invited to be concurring parties to this PA: Preservation Pennsylvania and the Pennsylvania Archaeological Council;

WHEREAS, the FHWA and the USACE have invited the public to review and participate in the development of this PA through Public Notices

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

WHEREAS, PennDOT maintains cultural resource staff and consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology and architectural history, or related fields (http://www.nps.gov/history/local-law/arch_stnds_9.htm);

WHEREAS, PennDOT, in consultation with the FHWA, USACE, ACHP, and the SHPO, has developed a handbook (Publication 689) containing guidance on how to implement this PA and the handbook has been made publicly available and is updated as needed;

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

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

WHEREAS, the FHWA, USACE, SHPO, and PennDOT support long-term planning that considers preservation of historic properties, and these agencies regularly participate in, and/or foster, the programs and processes to address historic preservation issues;

NOW, THEREFORE, the ACHP, FHWA, USACE, SHPO, and PennDOT agree that the Program, and PennDOT projects requiring USACE Permits, shall be administered in accordance
Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 2

with the following stipulations to satisfy the FHWA's, and the USACE's, Section 106 responsibilities.

Stipulations

FHWA, and/or the USACE (as applicable), with the assistance of PennDOT, shall ensure that the following measures are carried out:

I. Applicability and Scope

A. The PA among FHWA, SHPO, ACHP, and PennDOT regarding implementation of the Program in Pennsylvania dated December 14, 2017, is superseded by, and replaced in its entirety with, this PA.

B. This PA sets forth the process by which FHWA, and/or the USACE, will meet its responsibilities under Section 106, with the assistance of PennDOT, for transportation projects under the Program or which require USACE Permits.

C. This PA applies to any project under the Program and/or which require USACE Permits. 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, the USACE, ACHP, SHPO, Tribes and Nations, PennDOT, and any consulting parties will be involved in such review.

D. If any project changes from federal-aid to state funding, and a USACE Permit is required, the USACE shall be the lead federal agency responsible for compliance with Section 106 of the NHPA. To the extent that the USACE deems applicable, the USACE will use studies, findings and determinations previously completed by PennDOT to document its own findings.

E. Any other designated lead federal agency may use PennDOT studies to support their findings and determinations under Section 106 of the NHPA.

II. General Requirements

A. In compliance with its responsibilities under the NHPA and as a condition of their award of any assistance under the Program, FHWA will require PennDOT to carry out certain requirements as assigned by this PA. In compliance with its responsibilities under the NHPA, and as a condition to issuance of a USACE Permit, the USACE will require PennDOT to carry out certain requirements as assigned by this PA. This authorization does not preclude FHWA's right, or the USACE's right, to take the lead in consultation among PennDOT, the SHPO, and other consulting parties, or to consult with federally recognized Tribes and Nations on a government-to-government basis. If PennDOT cannot comply with the requirements of this PA for any undertaking under the Program, or which requires a USACE Permit, the lead federal agency shall complete the Section 106 process under applicable laws and regulations.

B. Qualifications and Training

1) PennDOT shall employ professionally qualified personnel sufficient to implement this PA. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are employees of the Commonwealth of Pennsylvania who meet the *Secretary of the Interior's Professional Qualifications Standards* (SOI's Standards) in the fields of archaeology or architectural history. Use of consultants will be guided by Stipulation III.E.

2) PennDOT, with the assistance of the USACE and/or FHWA and the SHPO, will provide training for PennDOT personnel and their consultants relative to implementation of this PA as specified in Attachment A to this Agreement. PennDOT personnel responsible for review under Stipulation III will receive such training prior to implementing activities under Stipulation III.

C. Tribal Consultation

1) Every other year after this PA goes into effect, the FHWA and the USACE shall send a joint letter to the following Tribes and Nations: Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; St. Regis Mohawk Tribe; Seneca-Cayuga Nation; Seneca Nation of Indians; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; and Tuscarora Nation. These letters will be individually addressed to the Tribal or Nation leaders of the listed Tribe or Nation. The letter will indicate that PennDOT has been assisting FHWA and the USACE regarding Section 106 responsibilities for undertakings, and advise the Tribes and Nations that if, at any time, they wish to consult directly with the lead federal agency on a government-to-government basis, they are available and ready to consult.

2) PennDOT may, on behalf of FHWA, and/or the USACE (as applicable), initiate consultation with Tribes and Nations for individual undertakings carried out under the provisions of this PA. PennDOT, on behalf of FHWA and/or the USACE, 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 Cultural Resources Handbook (Publication 689) or subsequent guidance. However, upon receipt of a request from any Tribe or Nation, or officially designated representative of a Tribe or Nation, to consult with FHWA or the USACE (as applicable) in lieu of PennDOT, FHWA or the USACE shall consult with that Tribe or Nation for the particular undertaking or program.

D. Historic Bridges

1) Pennsylvania's State Historic and Archaeological Resource Exchange (PA-SHARE) system will be utilized for determining the National Register of Historic Places (National Register) eligibility of previously evaluated bridges. The National Register eligibility of bridges will also be guided by the ACHPs *Program Comment for Actions Affecting Post-1945 Concrete and Steel Bridges*. With the exception of stone arch bridges, and closed spandrel concrete arch bridges, all other bridges or culverts

less than 21 ft. in length, as measured by waterway opening, shall not be considered individually eligible for the National Register except where a CRP determines, and/or the SHPO recommends, a bridge or culvert warrants further consideration under National Register Criterion C due to unusual, or exceptional features, or potential significance under National Register Criterion A and/or B. Stone arch bridges and closed spandrel concrete arch bridges that are less than 21 feet in length will be evaluated for National Register eligibility at the time of a project.

2) PennDOT, in consultation with the SHPO, will evaluate all bridge types and designs in PennDOT's Bridge Management System (BMS) not already evaluated by the SHPO and PennDOT within the last ten (10) years for loss, and according to current scholarship and, if deemed necessary by PennDOT and the SHPO, will reevaluate these bridge types and designs for National Register eligibility within four (4) years of the signing of this PA.

3) Every ten (10) years, PennDOT, in consultation with the SHPO, will develop a plan to review the population of bridges in BMS, which may result in the reevaluation of all, or a portion of, these bridges. PennDOT, and/or the SHPO, will prepare a written report summarizing the review, and will prepare a report for any bridge population reevaluation. PennDOT, and/or the SHPO, will provide the report(s) to the signatories to this PA and will make the report(s) available to the public.

E. PennDOT, and/or FHWA, will collaborate with the SHPO, and/or Tribes and Nations, in its transportation planning processes to develop projects and/or programs that incorporate historic preservation and tribal interests into transportation planning.

F. Pennsylvania Transportation and Heritage System

Pennsylvania Transportation and Heritage (PATH) is an online database and project management tool developed and managed by PennDOT to facilitate consultation with the SHPO, Tribes and Nations, consulting parties and the public. PATH is a geospatially referenced database of all projects in PennDOT's Multi-Modal Project Management System (MPMS), which consists of current and programmed PennDOT projects. All references in this PA to "submissions" and "notifications" is in reference to provision of information through this system unless otherwise noted. Paper copies of findings, forms, and other project information will be sent to any tribe, nation, or consulting party that is not willing, or able, to utilize PATH, or receive electronic communications.

G. Pennsylvania's State Historic and Archaeological Resource Exchange

To facilitate reviews conducted under this agreement and support long-term planning, the PA SHPO shall provide PennDOT, FHWA, and USACE staff operating under this agreement with access to PA-SHARE. PA-SHARE is the SHPOs online system for consultation and also provides access to available information on historic resources, archaeological sites, and surveys. In order to access PA-SHARE, PennDOT, FHWA, and USACE staff operating under this agreement will need to agree to the terms and conditions of the PA-SHARE Public Service Subscription Agreement. The PA-SHARE Public Service Subscription Agreement will coincide with the expiration date of the PA.

Archaeological privileges will be granted to individual professionals based on those who

meet the Secretary of the Interior's Professional Qualification Standards as an archaeologist. This access will allow a user to see archaeological site locations and the pre-contact probability model.

III. Project Review Responsibilities

PennDOT, the lead federal agency, and the SHPO, will observe the following requirements for all projects covered under this PA.

A. Level 1 Projects:

Projects meeting the Criteria listed in Appendix A to this Agreement and listed under "Appendix A: Level 1 Activities", have little potential to affect historic properties pursuant to 36 CFR 800.14(c) and may be reviewed by PennDOT District environmental staff (District Designee(s)). In the absence of a District Designee, or at the request of a District Designee, PennDOT CRPs may review projects listed in Appendix A: Level 1 Activities.

If a project, or an activity within the project, does not meet the criteria listed under Appendix A: Level 1 Activities, the project will be forwarded to the PennDOT CRPs for further review and evaluation.

- 1) Training – District Designees shall receive training in accordance with Attachment A prior to receiving authorization to review Level 1 project activities defined in Appendix A.
- 2) District Designees will exercise their best judgment to confirm that the conditions in Appendix A are being met and will document that no further review is necessary under Section 106. District Designees may consult with the PennDOT CRPs in reaching a decision. District Designee will document their decision in PennDOT's Categorical Exclusion Expert System (CEES), as part of the appropriate National Environmental Policy Act (NEPA) documentation.
- 3) Reporting of Appendix A: Level 1 Projects – PennDOT will create an electronic report of projects reviewed by the District Designees that meet the conditions in Appendix A; the report will be included in the annual report (see Stipulation X.D).

B. Level 2 Projects:

PennDOT CRPs will review the projects that meet the Criteria listed in Appendix A: Level 2 Activities. PennDOT CRPs may exempt such projects from further review under Section 106 pursuant to 36 CFR 800.14(c).

- 1) CRPs will document their decision in PennDOT's CEES as part of the appropriate NEPA documentation.
- 2) Reporting of Appendix A: Level 2 Projects – PennDOT will create an electronic report of projects reviewed by the CRPs that meet the conditions in Appendix A; the report will be included in the annual report (see Stipulation X.D).

C. For projects that do not meet the conditions of Stipulation III.A and III.B, and Appendix A, the PennDOT CRPs will be responsible for carrying out the following requirements.

1) FHWA, and/or the USACE (as applicable), authorize PennDOT to consult with the SHPO and other consulting parties on their behalf for the following purposes:

- a) soliciting and identifying consulting parties;
- b) conducting public involvement activities;
- c) establishing the area of potential effect (APE);
- d) determining the National Register eligibility of properties within the APE;
- e) determining effect; and initiating consultation on the resolution of adverse effects.

2) Non-Exempt Project Responsibilities:

a) Early Notification:

Prior to making a finding of effect for an undertaking, the PennDOT CRP will provide the SHPO and relevant Tribes or Nations with an Early Notification form for those projects that have the potential to affect historic properties where additional studies are needed prior to making a determination of effect. The Early Notification form will include a brief project description and a map location, as described in PennDOT's Cultural Resources Handbook.

b) Consulting Parties

In consultation with the SHPO, Tribes, and Nations, 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 properties affected by the undertaking, or other individuals or organizations with a demonstrated interest in the undertaking. As used in the stipulations of this PA, the term "consulting parties" refers to the consulting parties for an individual undertaking.

c) Tribal Consultation

PennDOT CRPs will initiate consultation with appropriate federally recognized Tribes and Nations following the protocol in Stipulation II.C and the procedures in PennDOT's Cultural Resources Handbook (Publication 689).

d) Involving the Public

Consistent with current state and federal laws and regulations and PennDOT policy,
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including PennDOT's Public Involvement Handbook (Publication 295), the Lead Federal Agency, 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.

PennDOT will make the Lead Federal Agency and the SHPO aware of any and all public interest, and/or controversy, as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to Tribes and Nations.

For projects that require an individual permit from USACE, the USACE public notice will contain a statement of the district engineer's current knowledge on historic properties and solicit comments and information necessary to evaluate the probable impact on the public interest (See 33 C.F.R. 325.3).

e) Area of Potential Effect

PennDOT CRPs will define the undertaking's APE as defined in 36 CFR 800.16(d). The APE will be established during a project field scoping. The APE established during a scoping field view may be a preliminary APE which will be developed and refined as the project progresses through preliminary engineering, in consultation with the SHPO, Tribes and Nations, and other consulting parties. The Lead Federal Agency may be consulted, or may request to be consulted with, in development of the APE.

The APE will be documented per Stipulation IV of this PA and the Cultural Resources Handbook.

(1) As a streamlining measure, PennDOT may combine consultation with the SHPO on the APE with consultation on determinations of eligibility and/or effect for projects classified as Categorical Exclusions (CE) and Environmental Assessments (EA) under NEPA.

(2) For projects requiring the preparation of an Environmental Impact Statement (EIS) under NEPA and the provisions of federal transportation legislation, the PennDOT CRP will consult with the SHPO on the APE early in project development prior to determinations of eligibility or effect.

f) Determine the Appropriate Level of Identification

(1) Based upon the best available background information gathered via a literature search, including but not limited to PA-SHARE, 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, consistent with 36 CFR 800.4(b)(1), the CRP will take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE. PennDOT will also seek information from consulting parties, as appropriate.

(2) When the PennDOT CRP determines that a field survey is necessary to identify historic properties, the CRP shall conduct, or cause to be conducted, a survey to identify historic properties. Such surveys will be conducted in a manner consistent with the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23), and, where appropriate, applicable SHPO guidelines, and the PennDOT Cultural Resources Handbook.

(3) Pursuant to 36 CFR 800.4(b)(2), and in consultation with the SHPO and other consulting parties, PennDOT may use a phased process to identify and evaluate above ground historic properties. In such cases, PennDOT will prepare, or cause to be prepared, a reconnaissance (also known as a "windshield") survey. Reconnaissance surveys are general project area reviews which establish the likely presence of historic properties within each alternative under consideration and will be documented in accordance with Stipulation IV and the Cultural Resources Handbook.

(4) 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 archaeological sites. In such cases, PennDOT will prepare, or cause to be prepared, an archaeological predictive model or archaeological sensitivity study to establish the likely presence of archaeological properties within each alternative under consideration and/or within inaccessible areas. A phased approach for the identification of archaeological properties may include deferral of archaeology under the following conditions utilizing a Deferral of Archaeology Testing form:

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

Once an alternative has been selected or access to property is gained, PennDOT shall comply with Stipulations III.C.2.e.(2), and III.C.2.f through III.C.2.i herein, as appropriate to determine the National Register eligibility of, and the effects of the project on, archaeological properties. If an adverse effect is determined, PennDOT will consult with the SHPO, Tribes and Nations, and consulting parties to seek ways

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to avoid adverse effects. If adverse effects cannot be avoided, PennDOT, in conjunction with the Lead Federal Agency, will consult to determine appropriate mitigation. Where a Deferral of Archaeology Testing form was utilized, PennDOT will capture the agreed upon mitigation in a Letter of Agreement or Memorandum of Agreement and share it with the Lead Federal Agency, the SHPO, Tribes and Nations and consulting parties.

When PennDOT wishes to use a phased identification and evaluation process for archaeological properties utilizing a deferral of archaeology form, but none of the above conditions apply, and/or the project will be having an adverse effect on above ground historic properties, a project-specific programmatic agreement will be prepared for the undertaking pursuant to 36 CFR 800.14(b).

g) Determination of Eligibility

(1) When PennDOT CRPs identify properties that may be eligible for the National Register of Historic Places, the CRPs will apply the National Register criteria following National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation* and the Secretary of the Interior's *Standards for Evaluation* (48 FR 44723-26). The PennDOT CRPs may consult with the SHPO and the Lead Federal Agency for the project 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 procedures in the Cultural Resources Handbook and any tribal agreements that are in place at the time. 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 boundaries following the guidance in National Register Bulletin 21, *Defining Boundaries for National Register Properties*. Due to the passage of time, the CRPs may also reevaluate properties.

(2) PennDOT CRPs will prepare documentation according to Stipulation IV and the Cultural Resources Handbook. For undertakings that will not affect historic properties, consultation with the SHPO on determination 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 Stipulation III.C.2.i.(2) apply or when Stipulation III.C.2.j applies. This consultation may be completed as a separate step or combined with the finding of effect. The documentation will be provided to the Tribes and Nations, consulting parties, and made available to the public.

h) No Historic Properties Affected

If the PennDOT CRPs determine that either there are no historic properties within the APE, or historic properties are present but will not be affected by the undertaking, the PennDOT CRPs shall issue a finding of No Historic Properties Affected through PATH. The PennDOT CRPs will document their finding according to Stipulation IV and the Cultural Resources Handbook and will notify the SHPO, the Lead Federal Agency, Tribes and Nations, and other consulting parties that a finding has been made and make the documentation available for public inspection prior to approving the undertaking. Except when dispute resolution in Stipulation XI is invoked, PennDOT may consider Section 106 concluded.

i) No Adverse Effect

(1) For those undertakings where historic properties may be affected, the PennDOT CRPs shall apply the criteria of adverse effect in accordance with 36 CFR 800.5. If the effect of the undertaking will not be adverse, the PennDOT CRPs will propose a finding of No Adverse Effect and will document their finding according to Stipulation IV and the Cultural Resources Handbook. The CRPs will submit the finding into PATH. PennDOT shall seek and consider the views of the Tribes and Nations, and other consulting parties, and will make its finding available for inspection by the public. If a Tribe or Nation, a consulting party, or member of the public objects to the finding within 30 days, the dispute resolution process in Stipulation XI will be applied. Except when dispute resolution in Stipulation XI is applied, PennDOT may consider Section 106 concluded.

(2) The PennDOT CRP will notify the Lead Federal Agency and will request the concurrence of the SHPO on findings of No Adverse Effect if they prefer but always under the following conditions:

- (a) Rehabilitation projects where the finding of No Adverse Effect is based on the proposed work being consistent with Secretary of Interior's Standards for rehabilitation,
- (b) When there is public controversy on historic preservation issues,
- (c) When a consulting party, FHWA, the USACE, a tribe, or nation requests the SHPOs concurrence.

If the SHPO objects to 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. If the SHPO fails to respond within the review period PennDOT may consider the Section 106 concluded, except where consulting party or public comments are received.

j) Adverse Effect

(1) If the PennDOT CRPs determine that the undertaking will have an adverse effect on historic properties, PennDOT will issue a finding of Adverse Effect

into PATH and will document the finding according to Stipulation IV and the Cultural Resources Handbook. PennDOT CRPs will consult with the SHPO, Lead Federal Agency, Tribes and Nations, and any other consulting parties, to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects. These parties will have 30 days to provide comment.

(2) PennDOT will notify the ACHP of the adverse effect finding through PATH. The ACHP will notify the CRP and the Lead Federal Agency within 15 days if they wish to participate in consultation; if the ACHP does not respond, the Lead Federal Agency and PennDOT will presume they do not wish to participate.

(3) The Lead Federal Agency will invite the ACHP to participate in consultation under any of the following conditions:

- (a) When the undertaking will adversely affect a National Historic Landmark, as defined in 36 CFR 65,
- (b) When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties,
- (c) When PennDOT, the SHPO, the USACE, and/or FHWA are not able to reach agreement on the resolution of adverse effects.
- (d) When a programmatic agreement under 36 CFR 800.14 is proposed.

(4) If, after consultation, PennDOT determines that adverse effects cannot be avoided, PennDOT will consult with the Lead Federal Agency, SHPO, Tribes and Nations, the ACHP if participating, and other consulting parties, as appropriate, to resolve the adverse effect.

(5) Resolution with a Letter of Agreement:

If the Lead Federal Agency, 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 and/or do not have a role in fulfilling the mitigation, PennDOT may prepare and execute a letter of agreement (LOA; Attachment B). The execution of a LOA, and implementation of its terms, will document the FHWA and/or the USACE's compliance with Section 106 for that undertaking. The letter of agreement shall be signed by the authorized representatives of the Lead Federal Agency, SHPO, and PennDOT, and approved as to form and legality by PennDOT's Office of Chief Counsel. If the ACHP is participating in the project a LOA cannot be used.

(6) Resolution with a Memorandum of Agreement:

FHWA and/or the USACE shall resolve adverse effects through a Memorandum of Agreement in the following circumstances:

- (a) When one, or more, of the concurring parties has a role in fulfilling the mitigation and, therefore, would need to sign the agreement.
- (b) If a consulting party objects to the proposed resolution of adverse effects.
- (c) If the ACHP is participating in the project.

(7) Resolution with a project Programmatic Agreement:

As per Stipulation III.C.2).f(4), a project Programmatic Agreement must be prepared when PennDOT wishes to use a phased identification and evaluation process but none of the conditions for deferral of archaeology in Stipulation III.C.2).f.(3) apply. When adverse effects have been determined for above-ground historic properties in conjunction with use of a phased identification and evaluation process for archaeological resources, documentation of the phased approach and resolution of adverse effects must be through a project Programmatic Agreement.

D. Review by SHPO

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

E. Use of Consultants in Project Review

- 1) Consistent with 36 CFR 800.2(a)(3), PennDOT may use consultants to gather information, analyze data, and prepare documentation. Consultants performing work for PennDOT, FHWA, and/or the USACE pursuant to this agreement must meet, or be supervised by, a person or persons meeting the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology and architectural history, or related fields. PennDOT, or FHWA or the USACE, where applicable, will be responsible for all findings and determinations made under this PA.
- 2) Consultant staff meeting the *Secretary of the Interior's Professional Qualifications Standards* may be qualified to assume the role of PennDOT CRP by written approval from the PennDOT Cultural Resources Unit Manager, and upon completion of the training specified in Attachment A.
- 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 PA, unless PennDOT obtains the written approval of FHWA, the USACE, and the SHPO, and provided the circumstances of Stipulation III.E.3 are met.

IV. Documentation

With the exception of projects covered under Stipulation III.A, III.B, and Appendix A, 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 all applicable laws, regulations, ordinances, Section 304 of the NHPA, and 36 CFR 800.11(c), PennDOT will ensure that PennDOT staff, 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.

B. Archaeology Site Location

The location of archaeological sites will typically qualify as exempt from the federal Freedom of Information Act (FOIA) and the state Right-to-Know-Law (RTKL). PennDOT, and any consultants assigned to act on behalf of PennDOT, will ensure that the location of all sites recorded during the course of project development will remain undisclosed to the public.

V. Standard Treatments

PennDOT, in consultation with FHWA, the USACE, 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, USACE, SHPO, and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix B of this PA, and the Cultural Resources Handbook, and may implement it, as appropriate, to avoid or resolve adverse effects. When the standard treatment would apply to properties of traditional cultural and religious significance to Tribes or Nations, PennDOT shall consult with appropriate Tribes or Nations in developing the standard treatment. A list of standard treatments is found in Appendix B.

VI. Treatment of Human Remains

If human remains, graves, or grave-associated artifacts are encountered during any Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 14

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 Lead Federal Agency if remains, graves, or grave-associated artifacts are found on federal or Tribal lands, or within 24 hours of the discovery if found on non-federal or non-Tribal lands and commence consultation to evaluate applicability of Section 106 of the NHPA. If Section 106 might apply, the Lead Federal Agency, or PennDOT, will concurrently notify the SHPO and any federally recognized Tribes and Nations that may attach religious or cultural significance to the affected property. If historic burials or cemeteries are encountered, PennDOT will follow procedures consistent with 9 Pa.C.S. § 101 et seq. PennDOT will also take into account the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), any guidance provided by Tribes or Nations, 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 and follow the requirements of the NAGPRA. No activities which might disturb or damage the remains, graves, or grave-associated artifacts, will be conducted until the Lead Federal Agency, 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, the Lead Federal Agency 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 PHMC through its bureau of the State Museum of Pennsylvania (State Museum) or its designee. A copy of the appropriate final archaeological report prepared according to the SHPOs Guidelines for Archaeological Investigations in Pennsylvania will be included in the submission.
- B. When artifacts are recovered from property not owned by the Commonwealth, PennDOT will explain to the property owner the importance of artifact donation and will request that the owner sign a gift agreement donating the artifacts to the State Museum. If the property owner does not wish to donate the artifacts, PennDOT will complete the necessary analyses prior to returning the artifacts, and will submit all records to the State Museum. A copy of the appropriate final archaeological report will be included with the submission.
- C. FHWA, to the degree the project is federally funded, will fund activities necessary to prepare collections for disposition; PennDOT will fund activities necessary to prepare collections for disposition for state funded projects and will be responsible for any fees relevant to long term curation regardless of federal funding.

- D. Requests by Tribes or Nations, or local institutions to curate archaeological

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collections will be considered on a case-by-case basis by the FHWA (for federally funded projects) and/or PennDOT in consultation with the State Museum.

VIII. Post-Review Discoveries

If previously unidentified historic properties are discovered after PennDOT has completed its review under this PA, or if an undertaking affects previously known historic properties in an unanticipated manner, the procedures under 36 CFR 800.13 will be followed. If the discovery is made during construction, the contractor shall immediately cease work in the area of the discovery and shall follow PennDOT Publication 408. When the discovery consists of human remains, graves, or grave-associated artifacts or other properties that may be of interest to federally recognized Tribes or Nations with ancestral ties to Pennsylvania, PennDOT will follow the procedures in Stipulation VI. Construction shall not resume in the area of the discovery until the Lead Federal Agency has complied with the requirements of 36 CFR 800.13.

IX. Emergencies

Pursuant to 36 CFR 800.12 for federally funded emergency projects, and 33 C.F.R. Appendix C, para. 14 for emergency projects with the USACE as the lead federal agency: in the event of an emergency declared by the President of the United States and/or the Governor of Pennsylvania, PennDOT and the Lead Federal Agency shall follow the procedures below.

A. Applicability – Emergency projects are defined as those projects defined in 23 CFR § 668.103 and 23 CFR § 668.109 and eligible for Emergency Relief (ER) funds.

B. Covered Activities

1) Type 1 activities are emergency work activities and include immediate rescue and salvage operations conducted to preserve life and property, repair to existing infrastructure, and other activities necessary to restore or maintain essential traffic, minimize the extent of damage, and/or protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)]. Type 1 emergency activities must be completed within 180 days of the event and are 100% federally funded.

a) If possible, the CRP will visit the project site and provide advice on measures to avoid adverse effects, or to minimize or mitigate adverse effects to historic properties (properties listed in, or eligible for listing in, the National Register of Historic Places).

b) The CRP shall work closely with the work crews to ensure all reasonable measures are implemented.

2) Type 2 emergency activities are permanent work activities, and defined as all other emergency projects not covered under Type 1 where the repair or reconstruction work

Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 16

will be commenced within two years of the declaration, as specified under the emergency repairs provisions of the Federal-Aid Highway Program (Title 23 United States Code §125). Pursuant to Title 23 CFR 771.117(c)(9), this includes the repair, reconstruction, restoration, retrofitting or replacement of any road, highway, or bridge in operation or under construction when damaged, and the action occurs within the existing right-of-way, and in a manner that substantially conforms to the preexisting design, function, and location as the original. If the NEPA approval for an emergency project includes a permanent repair under CE 1a Item 9, and is otherwise not exempt, PennDOT may request an expedited review by the SHPO. Notifications will clearly indicate that the project is an emergency action pursuant to a declared emergency. PennDOT and the SHPO will negotiate a review time that is mutually agreeable to both parties; such negotiation can include groups of projects. PennDOT will make reasonable effort to consult with the public and property owners.

X. Annual Review and Monitoring

A. The USACE and/or the FHWA will monitor activities carried out pursuant to this PA within their jurisdiction in consultation with the ACHP and SHPO. PennDOT shall cooperate with any party in carrying out any monitoring effort.

B. PennDOT, the ACHP, and/or the SHPO may each establish its own internal monitoring program.

C. PennDOT will meet with the SHPO annually, or as requested by either the SHPO or PennDOT, to review the implementation of this PA, to discuss projects, or to suggest improvements. Any unresolved issues or recommendations for improvement or modifications to the implementation of this PA will be forwarded to the FHWA, the USACE, 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 and a list of projects exempted under Appendix A. The report may also identify issues and make recommendations for improving the implementation of this PA. PennDOT will submit the report to the signatories of this PA within 90 days from the end of the reporting year and make the report available on its cultural resource's website. The report will serve as the basis for any annual review of this PA that is conducted.

E. Within three months of receipt of the annual report, the FHWA, the USACE, ACHP, SHPO, and PennDOT will consult, if desired by any of the parties, to review implementation of the terms of this PA. The review, to the degree undertaken, will include an assessment of PennDOT qualified staff to ensure that adequate staffing is maintained to implement this PA. The parties may conduct an assessment of the program. Should the assessment result in evidence that the requirements of this PA are not being met, the parties will meet to develop corrective measures. If an individual PennDOT District fails to meet the requirements of this PA, the USACE and/or the FHWA may suspend that District from participating in this PA; in that case the USACE and/or the FHWA, or the PennDOT Central Office Cultural Resource Unit will be responsible for carrying out the requirements of 36 CFR Part 800 pursuant to this PA for that District, for the duration of the suspension.

XI. Dispute Resolution

A. Except as provided in Stipulation XI. B (below), should any party to this PA, or a consulting party on an individual undertaking covered by this PA, object within 30 days to any actions proposed or findings submitted for review, PennDOT shall notify the Lead Federal Agency and continue to consult with the objecting party(ies) to resolve the objection. If PennDOT determines that such objection(s) cannot be resolved, it shall request the Lead Federal Agency's assistance in resolving the objection. If the Lead Federal Agency determines that the objection remains unresolved, the Lead Federal Agency 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 the Lead Federal Agency on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to this PA, will be taken into account by the Lead Federal Agency 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, the Lead Federal Agency may render a decision regarding the dispute. In reaching its decision, the Lead Federal Agency will take into account all comments regarding the dispute from the parties to this PA.
- 3) The Lead Federal Agency's, and PennDOT's, responsibility to carry out all other actions subject to the terms of this PA that are not subject of the dispute remain unchanged. The Lead Federal Agency will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The Lead Federal Agency decision will be final.

B. If the SHPO objects to a National Register eligibility determination made by PennDOT or the Lead Federal Agency pursuant to this PA, and that objection cannot be resolved through consultation among the Lead Federal Agency, SHPO, and PennDOT, or if the ACHP so requests, the Lead Federal Agency 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 PA and the objection cannot be resolved through consultation with that party, the Lead Federal Agency, 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 of the signatories of this PA, may request that it be amended, whereupon the signatories shall consult to consider such amendment. Authorized representatives of all the signatories shall sign the amendment; PennDOT's Office of Chief Counsel, PHMC's Office of Chief Counsel, the Pennsylvania Governor's Office of General Counsel, and the Pennsylvania Office of Attorney General shall approve it as to legality and form.

B. The lists of exempt activities in Appendix A and the Cultural Resources Handbook may

be modified by the mutual written consent of all signatories to the PA 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 this PA.

C. Any Attachment in this PA may be modified by the mutual written consent of the FHWA, USACE, PennDOT, and the SHPO and shall not require a formal amendment to this PA. Upon such agreed upon revisions, PennDOT shall provide the revised Attachment to all the parties to this PA.

D. Written consent of PennDOT may be provided by the Director of the Bureau of Design and Delivery or designee.

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, the Lead Federal Agency shall conduct individual project reviews pursuant to Section 106

XIV. Duration of the PA

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

FHWA, the USACE, PennDOT, SHPO, and the ACHP will review this PA every ten (10) years from the Effective Date for modifications or termination. If no changes are proposed and no party objects, the term of the PA will be extended for another ten years by written agreement of all signatories.

XV. Severability

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

XVI. Assignment

Except as provided herein, the responsibilities included in this PA may not be assigned by any party to this Agreement either in whole or in part, without the written consent of the signatories.

XVII. Signatures

This PA may be executed in counterparts, each of which shall be deemed an original and shall have the full force and effect as an original but all of which shall constitute one and the same instrument. This PA may be executed electronically.

XVIII. Notices

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

- 1) For ACHP: Director, Office of Federal Agency Programs, 401 F Street NW, Suite 308, Washington DC 20001-2637, Telephone Number: (202) 517-0200.
- 2) For FHWA: Director of Program Development, 228 Walnut Street, 5th Floor, Harrisburg, PA 17101, Telephone Number: (717) 221-4545
- 3) For PennDOT: Deputy Secretary for Highway Administration, 400 North Street, 8th Floor, Harrisburg, PA 17112, Telephone Number: (717) 787-6875.
- 4) For SHPO: Deputy SHPO, 400 North Street, 2nd Floor, Harrisburg, PA 17120, Telephone number (717) 787-4215.
- 5) For USACE, Baltimore District: Chief, Regulatory Branch, Baltimore District, 2 Hopkins Plaza, Baltimore, MD 21202.
- 6) For USACE, Philadelphia District: Commander, Philadelphia District, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390.
- 7) For USACE, Pittsburgh District: Commander, Pittsburgh District, 2200 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222-4186.

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

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

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: 
Sara C. Bronin, Chair

DATE: 2.17.2023

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

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____
Reid Nelson, Executive Director, Acting

FEDERAL HIGHWAY ADMINISTRATION

BY: ALICIA E NOLAN Digitally signed by ALICIA E NOLAN
Date: 2022.12.13
11:52:24 -05'00' DATE: _____
Alicia Nolan, Division Administrator

UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT

BY: Wade B. Chandler DATE: 10 Aug 2022
Wade B. Chandler, Chief, Regulatory Branch

UNITED STATES ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT

BY: BRIGANTTI, RAMON BRIGANTTI, RAMON 1181985
263 Digitally signed by
BRIGANTTI, RAMON 1181985263
Date: 2022.08.22 17:26:57 -0400 DATE: _____
Lieutenant Colonel Ramon Brigantti, P.E., District Commander

UNITED STATES ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT

BY: Adam J. Czekanski DATE: 9/12/22
Colonel Adam J. Czekanski, District Engineer

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: Andrea MacDonald DATE: 10/14/2022
Andrea MacDonald, Director
State Historic Preservation Office

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: Christine A. Spangler Digitally signed by Christine A. Spangler
Date: 2022.10.06 13:25:14 -04'00' DATE: _____
Christine Spangler, P.E., Director
Bureau of Design and Delivery

OTHER CONCURRING PARTIES:
PENNSYLVANIA ARCHAEOLOGICAL COUNCIL

BY: Ira Beckerman
Ira Beckerman, President

DATE: 10/27/22

~~PRESERVATION PENNSYLVANIA~~

BY: _____
~~Mindy C. Ford, Executive Director~~

DATE: _____

Approved as to Legality and Form

BY: Neal Thomas Brofee
For PennDOT Chief Counsel

Digitally signed by Neal Thomas
Brofee
Date: 2022.10.31 18:28:37 -04'00'

DATE: _____

BY: Michael J. ...
For SHPO (PHMC) Chief Counsel

DATE: 10/18/2022

BY: Andrew Hanna
Deputy General Counsel

2022.11.08
15:47:35 -05'00'

DATE: _____

BY: David E. Stover
Deputy Attorney General

Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.11.28 15:21:33 -05'00'

DATE: _____

APPENDIX A

Exempted Activities

PennDOT District Designees and/or Cultural Resource Professionals (CRP) may review and determine that undertakings are exempt from further review under Section 106 of the National Historic Preservation Act, provided that the undertakings meet all the criteria below, and are limited to the activities listed under Level 1 and Level 2. District Designees may only review Level 1 project activities. If a District lacks a Designee, or at the preference of a District, the CRPs will review Level 1 activities. Level 2 project activities may only be reviewed and exempted by the CRPs.

Criteria for all Exempted Activities

The undertaking must be classified as categorically excluded under FHWA's National Environmental Policy Act Regulations and the following criteria must apply:

- The undertaking is limited to the activities specified under Level 1 and 2 below;
- The undertaking is on an existing transportation facility;
- The undertaking is not within or adjacent to a National Historic Landmark or National Park, or property under the jurisdiction of the National Park Service;
- The undertaking has no known public controversy based on historic preservation issues; and
- The undertaking requires no more than 3.6 meters (12 feet) of new right-of-way and/or new permanent easement beyond the existing right-of-way and/or existing permanent easement at its widest point, on each side of the road, rail bed, existing trail or pedestrian facility.

Level 1 Activities

A. Projects which may be determined Exempt by District Designee or CRP

- 1) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange
 - a) Reconstruction of the existing roadbed (including existing shoulders), provided in-kind or compatible modern materials are used. Reconstruction may include, but is not limited to: resurfacing; restoration; rehabilitation; surface treatments; milling and grooving; installation of new drainage pipes within the roadbed. This includes all pavement preservation, maintenance betterments and roadway rehabilitation activities under Stipulation 1 of the Programmatic Agreement between the FHWA and PennDOT for Bridge, Roadway and Non-Complex Projects (BRPA). This also includes installation of pavement markings (both normal and raised) and snow and ice detectors.
 - b) Creation of turning lanes or crossovers within the existing roadbed or disturbed median.

- c) Removal or replacement of existing guide rail.
 - d) Installation of new guiderail provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible for listing on the National Register of Historic Places (NR).
 - e) Installation of new, or replacement of, median barriers or median guide rail.
 - f) Activities within existing disturbed highway interchanges.
- 2) Rehabilitation of existing at-grade railroad crossings provided there is no change in grade.
- 3) Drainage improvements, including installation, replacement or rehabilitation, and cleaning activities associated with existing drains, dikes, headwalls, culverts with an opening 8 feet or less in width, pipes and storm sewers.
- 4) Bridge Projects
- Rehabilitation or preservation of bridges (including culverts over 8 feet), that are less than 50 years old, previously determined not individually eligible, or categorically not individually eligible pursuant to Stipulation II.D of the Statewide FHWA and USACE delegation programmatic agreement (Delegation PA). This includes all preservation activities under Part B, Stipulation 2 of the BRPA and all bridge rehabilitation activities under Part B, Stipulation 1 of this agreement (activities 2 through 10) except for activity 2 as it relates to the replacement of bridge parapets and activity 9 as it relates to bridge beautification activities. Bridge rehabilitation projects involving the replacement of parapets on bridges that are over 50 years old, regardless of the individual NR eligibility status of the bridge, must be reviewed by the District CRP and may only be exempted by the CRP. Bridge beautification activities must be reviewed by the District CRP. In-kind bridge curb and gutter replacement activities, however, are exempt activities.
- 5) Minor widening or minor changes in alignment provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible, and there are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE.
- 6) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances
- a) Installation or upgrade of regulatory signs, and railroad warning signs and devices; or upgrade of advisory signs.

- b) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers and/or noise walls. Exception: when in a city, borough, or town, the area must have been previously determined to be ineligible as a historic district.
- c) Installation of new lighting, fencing, retaining walls, traffic signals, advisory signs, barriers and/or noise walls, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible.
- d) Installation or replacement of Intelligent Transportation System (ITS) cameras and devices, and electronic advisory signs, including Dynamic Variable Message Sign structures.

7) Sidewalks and Curbing

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

8) Transportation Enhancement/Safe Routes to School Projects

- a) Streetscape improvement activities limited to planting of trees and installation of non-permanent amenities such as bike racks, trash receptacles, and benches.
- 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 PA-SHARE system, 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 riprap, etc.), provided there are no additional ground disturbing activities and access to the stream is located within a previously disturbed area. Replacement of existing gabion baskets can be used under this exemption where 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 NR eligible. This exemption does not include placement of new gabion baskets where gabion baskets did not exist.
- 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 PA-SHARE .
- 15) Clean-up and restoration of roadway to pre-existing conditions for hillside slumps and slides; slope stabilization activities within existing right-of-way.

Level 2 Activities

B. Projects Exempted by the Cultural Resource Professional

The District CRP may review and determine exempt the projects below provided they meet the overall criteria outlined above.

The CRP exemptions will be based upon a scoping field view and/or the PennDOT “video log” of the project area and/or background research (including, but not limited to PA-SHARE, and historic maps).

1. Bridge Replacement/Removal Projects

The District CRP may review and exempt bridge replacement projects (including culverts over 8 ft.) provided that:

- a) The structure is less than 50 years old, the structure is categorically not NR eligible per Stipulation II.D, or previously determined not NR eligible, and remains not NR eligible in the documented opinion of the CRP;
- b) The structure is being replaced on existing alignment;
- c) All standing structures within the project APE are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible and remain

not NR eligible in the opinion of the CRP, or all properties over 50 years old are not NR eligible in the opinion of the CRP, and the project is not within, or immediately adjacent to, a NR eligible, or potentially NR eligible, historic district;

- d) There are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE , or visible evidence on the ground surface in the APE; and
- e) The District CRP for Archaeology has determined that any temporary construction easements associated with the project have been previously disturbed. If any temporary construction easement is determined to have a high probability for archaeological sites, and geotextile and fill will be used as a protective measure in lieu of archaeological testing, the exemption cannot be applied. The CRP must follow the procedures in Appendix B of the Delegation PA for application of the standard treatment.

2) Bridge Rehabilitation or Preservation Projects

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

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

Installation of new guiderail, provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.

- 4) Minor widening or minor changes in alignment provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP and there are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE.

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

- a) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls in an historic district, and/or where other historic properties are present in the APE, provided that the upgrade or replacement is in-kind in general appearance.
- b). Upgrade or replacement of over 50-year-old lighting (mast heads and/or poles),

fencing, retaining walls, traffic signals, barriers, and/or noise walls provided, in the opinion of the CRP, none of these aforementioned elements being upgraded/replaced are individually eligible and there is neither an historic district nor other historic properties in the APE.

- c) Installation of new lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls, as well as new advisory signs, provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
- 6) Sidewalks and Curbing
 - a) Installation of new sidewalks and/or curbing, and/or bulb-outs provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
 - b) Construction of sidewalk improvements in the form of drainage cuts or curb cuts made under the Americans With Disabilities Act and guidance in PennDOT Design Manual 2 Publication 13M), provided that the curb cuts are determined to have no effect on any eligible or listed historic district or other NR eligible or listed property in the APE.
- 7) Stream stabilization and restoration activities involving the replacement of, or placement of new (not previously in place), gabion baskets where all standing structures in the APE are not NR eligible in the opinion of the CRP.
- 8) Appendix A activities of the Federal Railroad Administration Section 106 Program Comment for Rail Rights-of-Way. This includes, but is not limited to, Activity B.8: "Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction". This also includes Activity E.5: "in-kind rehabilitation or replacement of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses). This does not include modifications to existing grade separation structures (e.g., bridges, overpasses) that would result in a substantial increase in height or overall massing or substantial change in appearance. Replacements must be substantially the same appearance and size as existing."
- 9) Emergency Activities involving repair to existing infrastructure and other activities necessary to restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices.

APPENDIX B

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 or timber matting 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, the USACE, SHPO, and consulting parties have been given the opportunity to provide their views.

1. Historic Bridges

- a) Marketing Historic Bridges
- b) Replacement of Bridges Only Significant as Contributing to a Historic District - The District CRP will work with the project team and consulting parties on a replacement design that is in keeping with the scale, materials, and massing of the historic

(contributing) bridge and may incorporate design elements which are in keeping with the characteristics that make the historic district eligible for the National Register (i.e. a Context Sensitive Design). Although the project would have an adverse effect, no other mitigation will be necessary for projects in which the only adverse effect is the replacement of a contributing bridge, except as negotiated with the community/consulting parties.

ATTACHMENT A

Training Requirements

Note: To the extent possible, the training requirements will be offered as webinars.

1. Training for District Designees

a) **Basic Training** - A District Designee, specifically PennDOT environmental staff, must successfully complete the following training prior to receiving authorization to review activities covered under Appendix A of this PA:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- PennDOT training on Application of the PA, and the Cultural Resources Handbook, including an overview on tribal consultation; and
- SHPO training on Pennsylvania History Code, SHPOs online data management systems, and other Pennsylvania-specific topics (taken within 1 year of delegation).

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

- PennDOT's Cultural Resources Handbook Refresher. PennDOT and SHPO PA Refresher training will be offered annually, such as at the PennDOT Environmental Managers (EM) meeting. The refresher will address changes to guidance, regulations, and delegated responsibilities as well as current topics. This training will be made available as a webinar for those who cannot travel.

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

a) **Basic Training** - 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 successfully complete the following training:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- PennDOT training on the Application of this PA and Cultural Resources Handbook, including Tribal consultation; and
- SHPO training on Pennsylvania History Code, SHPOs online data management systems, relevant historic context, and other Pennsylvania-specific topics. The training

Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 31

will allow for interaction with SHPO staff.

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

- PennDOT refresher on the Application of the PA and Cultural Resources Handbook and/or special topic meetings/webinars relevant to the application of this PA as determined/documented by PennDOT's Cultural Resources Section Manager.

In order to maintain delegation, CRPs, and Consultants under Management Contract must successfully complete the following training **every two years**:

- Attend a joint PennDOT and SHPO staff meeting. These meetings usually occur annually.
- Attend a minimum of two (2) PA SHPO and PennDOT approved sessions at the Statewide Conference on Heritage (when held) or other conference or training relevant to historic preservation, as determined/documented by PennDOT's Cultural Resources Section Manager.

3. Changes to the Section 106 regulations and guidance

Whenever major changes to 36 CFR 800 become effective, or the ACHP updates relevant guidance, or issues relevant program comments, District Designees and Cultural Resource Professionals will participate in training on the new regulations or guidance within a year of when it goes into effect.

ATTACHMENT B

Letter of Agreement Template

(FHWA lead example; USACE to be substituted for FHWA for USACE lead projects)

LETTER OF AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, AND THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE _____ PROJECT IN township/borough/City, _____ COUNTY, PENNSYLVANIA

WHEREAS, the Federal Highway Administration (“FHWA”), the U.S. Army Corps of Engineers (“USACE”), the Advisory Council on Historic Preservation (“ACHP”), the State Historic Preservation Officer (“SHPO”) and the Pennsylvania Department of Transportation (“PennDOT”) on _____ 2022 executed a Programmatic Agreement (“PA”) regarding implementation of the Federal Aid Highway Program in Pennsylvania;

WHEREAS, PennDOT proposes to describe project (hereafter referred to as “the Project”);

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

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

WHEREAS, pursuant to Stipulation III.C.2.b of the PA, PennDOT has made an effort to seek consulting parties and the following have been accepted as consulting parties: name consulting parties;

WHEREAS, Stipulation III.C.2.j.5 provides for the preparation and execution of a Letter of Agreement (“LOA”) where there is agreement about measures to be taken to resolve adverse effects among the required parties;

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (“ACHP”) of
Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 33

the adverse effect finding and the ACHP has declined to participate in resolving the adverse effects of the Project;

NOW, THEREFORE, the FHWA, SHPO, and PennDOT agree that PennDOT will complete the following stipulations in order to mitigate the adverse effects of the Project on name adversely affected historic properties.

Stipulations

Personnel Qualifications:

PennDOT shall ensure that all archaeological work carried out pursuant to this LOA 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, and that all historic preservation work is carried out by, or under the direct supervision of, a person or person meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals (see http://www.nps.gov/history/local-law/arch_stnds_9.htm).

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.

Duration

This LOA will expire if its terms are not carried out within __ years from the date of its execution. Prior to such time the FHWA may consult with the other signatories to reconsider the terms of the LOA and amend it.

Termination

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

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

This letter agreement does not supersede other provisions of the Amended PA, specifically:

VI. Treatment of Human Remains;

VII. Preparation of Archaeological Materials for Final Disposition;

VIII. Post-Review Discoveries;

IX. Dispute Resolution;

FEDERAL HIGHWAY ADMINISTRATION (*or U.S. ARMY CORPS OF ENGINEERS*)

By: _____ Date: _____

Name & Title: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name & Title: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Name & Title: _____

Approved as to Legality and Form

By: _____ Date: _____

APPENDIX 2 - PENNDOT-SHPO STATEWIDE MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the Pennsylvania Historical and Museum Commission (“PHMC”) through its State Historic Preservation Office (“SHPO”) and the Pennsylvania Department of Transportation (“PennDOT”).

WHEREAS, this MOU supersedes the October 12, 2011 agreement between PennDOT and PHMC which describes how PennDOT would fulfill its duties under the Pennsylvania History Code, 37 Pa C.S. §§ 507-510;

WHEREAS, PennDOT and the SHPO entered into a Programmatic Agreement (“PA”) with the Federal Highway Administration (“FHWA”), the U.S. Army Corps of Engineers (“USACE”) and the Advisory Council on Historic Preservation (“ACHP”) February 17, 2023 to describe how PennDOT would fulfill its duties under the National Historic Preservation Act (“NHPA”), attached in Exhibit A;

WHEREAS, PennDOT intends to fulfill its obligations under the Pennsylvania History Code, 37 Pa C.S. §§ 507-510 by utilizing similar processes and procedures specified in the PA for considering the effects of state- funded transportation projects on historic properties;

WHEREAS, the Pennsylvania History Code prohibits Commonwealth agencies, in the absence of specific statutory language in their enabling or regulatory statutes, “from stopping the processing or denying a permit solely because of the possible or actual presence of archeological resources”, 37 Pa. C.S. § 508(a)(4);

WHEREAS, any state-funded transportation project that requires a permit from any federal agency not party to the PA, will follow the requirements of Section 106 of the NHPA;

WHEREAS, Sections 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.

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

I. PennDOT Responsibilities.

- A. This MOU applies to projects with no federal funding, federal permit or other federal action.
- B. PennDOT will define “historic property” consistent with 36 C.F.R. § 800.16(l) which defines an historic property as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (National Register).
- C. PennDOT shall employ professionally qualified personnel sufficient to implement this MOU. PennDOT personnel, hereafter referred to as Cultural Resource Professionals

(“CRP”), will meet the Secretary of the Interior’s standards for professional qualifications in the fields of archaeology and architectural history, or related fields.

D. PennDOT will follow Stipulation II.D of the PA for consideration of historic bridges.

II. Project Review.

A. PennDOT will follow the process described in Stipulations III-XIII and Appendix A of the PA (excluding involvement by the FHWA, the USACE, and the ACHP) 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.

1) 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 timely contact the district environmental manager, who will involve the CRPs as necessary, when any of the following projects or activities will be completed by PennDOT maintenance forces.

- a. Replacement or rehabilitation of bridges that are over 50 years old, unless the structure is categorically not eligible per stipulation II.D of the PA, or was previously determined not eligible for the National Register.
- b. Maintenance or preservation of the structural elements of bridges previously determined eligible for the National Register.
- c. Maintenance activities that could affect stone retaining walls, or building ruins including foundations in state highway right-of-way, or involve the removal of old tree rows.

2) The district CRP may exempt any of these maintenance projects or activities from further review if the conditions of Appendix A in the PA are met; otherwise, the CRP will follow the process in the PA outlined in Stipulation III.A above.

3) Nothing in this MOU shall be interpreted to limit PennDOT’s absolute right to trim, cut and remove trees, grasses, shrubs and vines pursuant to Section 410 of the State Highway Law of 1945, 36 P.S. §670-410.

C. Procedure for Resolving Adverse Effects

1) 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 SHPO 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 from the issuance of the finding to provide comment.

- 2) If PennDOT and the SHPO agree on how adverse effects will be resolved, they will execute a Letter of Understanding (LOU), utilizing the template included in Exhibit B, that stipulates any measures undertaken to mitigate adverse effects. The LOU will be signed by duly authorized signatories of PennDOT and the SHPO.
- 3) When a party that is not a signatory to this MOU assumes a responsibility for the resolution of the adverse effects, a project specific Memorandum of Understanding will be executed.
- 4) If agreement on the resolution of adverse effects is not reached, the agencies will follow the dispute resolution process set forth in Section VI.

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 PennDOT's Cultural Resources Handbook, Publication 689.

III. Highway Occupancy Permits

- A. The following process applies to Highway Occupancy Permit ("HOP") applications submitted to PennDOT in regard to access to and occupancy of state highways by driveways and local roads. Other sections of this MOU do not apply to the HOP process.
- B. The HOP 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 the work includes an auxiliary lane or other widening, PennDOT will request the HOP applicant to submit information to the SHPO for its review. The submittal to the SHPO should consist of a completed project review form with appropriate attachments. The submittal to the SHPO should specifically identify the proposed access location and provide: an appropriate section of a United States Geological Survey ("USGS") 7.5 minute topographic quadrangle map specifically identifying the property; copies of plans of both proposed and existing conditions; and a completed SHPO project review form. The cover letter should include narrative that describes the project in detail. The SHPO will provide a written response to the applicant within 15 business days of receipt of this initial notification by the applicant.
- C. If an existing NRHP eligible or listed archaeological site, or a location having high potential for a NRHP eligible archaeological site, are located within the project's area of ground disturbance, the SHPO may request that the applicant conduct an archaeological survey. The applicant may be asked to evaluate previously unevaluated sites in the area of ground disturbance for NRHP eligibility and seek the concurrence of the SHPO. If a NRHP eligible or listed building, site, structure, or district will be affected, and the effect is adverse, additional consultation may be requested on measures to avoid adverse effects, minimize effects, or mitigate where avoidance is not possible. The SHPO will respond within 30-day time frames to all submittals beyond the initial notification.

- D. PennDOT will be copied on all correspondence and invited to participate in any consultation to resolve adverse effects.

V. Review and Monitoring of the MOU

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

VI. Dispute Resolution

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

VII. Amendment

This MOU shall only be modified in writing with the same formality as the original MOU.

VIII. Termination

PennDOT or the SHPO 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 SHPO on a process or procedure for fulfilling its obligations under the Pennsylvania History Code.

IX. Duration

This MOU will become effective on the date of the last signature. PennDOT and SHPO 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 MOU will automatically remain in effect for another ten years without re-execution.

X. Contractual Rights and Obligations

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

XI. Choice of Law

The laws of the Commonwealth of Pennsylvania shall be used to interpret this MOU.

XII. Points of Contact

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

1. For PennDOT: Cultural Resources Section Chief, Bureau of Design and Delivery, PennDOT, 400 North Street, 7th Floor, Harrisburg, PA 17112, Telephone Number: (717) 705-1484.
2. For SHPO: Deputy SHPO, 400 North Street, 2nd Floor, Harrisburg, PA 17120, Telephone number (717) 787-4215.

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

XIII. Entire Understanding

This MOU represents the entire understanding between the parties. No other prior or contemporaneous oral or written understandings exist regarding this relationship.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed in accordance with the terms and conditions set forth herein.

PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION -STATE HISTORIC PRESERVATION OFFICE



Andrea MacDonald
Director & Deputy State Historic Preservation Officer

3/20/2023

Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Christine A. Spangler Digitally signed by Christine A. Spangler
Date: 2023.03.17 16:13:46 -04'00'

Christine A. Spangler, PE
Director, Bureau of Design and Delivery

Date

Approved as to Legality and Form		
BY	 _____ PHMC Counsel	3/27/2023 _____ Date
BY	 _____ PennDOT Counsel	Digitally signed by Neal Thomas Brofee Date: 2023.03.28 17:16:26 -04'00' _____ Date
BY	 _____ Deputy General Counsel	2023.04.22 13:06:37 -04'00' _____ Date
BY	_____ Deputy Attorney General	_____ Date
BY	 _____ Office of Comptroller Operations	Digitally signed by Katalin Gotshall Date: 2023.05.03 15:25:00 -04'00' _____ Date
No Funds		

EXHIBIT A

Programmatic Agreement among the Federal Highway Administration, the
U.S. Army Corps of Engineers, the Advisory Council on Historic
Preservation, the State Historic Preservation Office, and the Pennsylvania
Department of Transportation

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE U.S. ARMY CORPS OF
ENGINEERS, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE
PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER AND THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION REGARDING
IMPLEMENTATION OF THE NATIONAL HISTORIC PRESERVATION ACT FOR
FEDERAL AID HIGHWAY PROJECTS AND/OR HIGHWAY PROJECTS REQUIRING A
U.S. ARMY CORPS OF ENGINEERS PERMIT IN PENNSYLVANIA.**

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

WHEREAS, the U.S. Army Corps of Engineers (USACE) regulates discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States under section 404 of the Clean Water Act (33 U.S.C. § 1344) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) through a permit program (hereafter referred to as USACE Permits);

WHEREAS, PennDOT must obtain USACE Permits from USACE for regulated impacts to waters of the United States from its highway projects;

WHEREAS, PennDOT and the FHWA executed a programmatic agreement (2010 PA) regarding implementation of the Program in Pennsylvania on March 18, 2010, 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 Part 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) (Section 106) and amended the 2010 PA on December 14, 2017;

WHEREAS, the signatories to the 2010 PA, as amended, desire to replace the 2010 PA in its entirety with this Programmatic Agreement (PA);

WHEREAS, for federally funded projects, the Pennsylvania FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Program complies with Section 106 of the NHPA, as amended, and codified in the implementing regulations, 36 CFR 800, as amended (August 5, 2004), and is the Lead Federal Agency for federally funded projects;

WHEREAS, for wholly state-funded projects requiring a USACE Permit, the USACE Baltimore, Philadelphia, or Pittsburgh District Commander is the “Agency Official” responsible for ensuring that the USACE Permits in the State of Pennsylvania comply with Section 106 of the NHPA and is the Lead Federal Agency for federally permitted projects that do not involve federal funding;

WHEREAS, the FHWA and the USACE recognize that they have a unique legal relationship with Tribes and Nations set forth in the Constitution of the United States, treaties, statutes, and court decisions, and, therefore, consultation with a Tribe or Nation must recognize the government-to-government relationship between the federal government and Tribes and Nations;

WHEREAS, in the development of this PA, the FHWA and the USACE have jointly contacted Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 1

the following federally recognized Tribes and Nations with ancestral ties to Pennsylvania, which may attach religious or cultural significance to properties in Pennsylvania, provided them the opportunity to consult and to concur with this PA, and none have elected to participate as concurring parties: Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; St. Regis Mohawk Tribe; Seneca-Cayuga Nation; Seneca Nation of Indians; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; and, Tuscarora Nation;

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

WHEREAS, the FHWA and the USACE have invited other parties to participate in the development of the PA pursuant to 36 CFR § 800.2(c)(5), and the following parties participated in the consultation and have been invited to be concurring parties to this PA: Preservation Pennsylvania and the Pennsylvania Archaeological Council;

WHEREAS, the FHWA and the USACE have invited the public to review and participate in the development of this PA through Public Notices

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

WHEREAS, PennDOT maintains cultural resource staff and consultants meeting the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology and architectural history, or related fields (http://www.nps.gov/history/local-law/arch_stnds_9.htm);

WHEREAS, PennDOT, in consultation with the FHWA, USACE, ACHP, and the SHPO, has developed a handbook (Publication 689) containing guidance on how to implement this PA and the handbook has been made publicly available and is updated as needed;

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

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

WHEREAS, the FHWA, USACE, SHPO, and PennDOT support long-term planning that considers preservation of historic properties, and these agencies regularly participate in, and/or foster, the programs and processes to address historic preservation issues;

NOW, THEREFORE, the ACHP, FHWA, USACE, SHPO, and PennDOT agree that the Program, and PennDOT projects requiring USACE Permits, shall be administered in accordance
Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 2

with the following stipulations to satisfy the FHWA's, and the USACE's, Section 106 responsibilities.

Stipulations

FHWA, and/or the USACE (as applicable), with the assistance of PennDOT, shall ensure that the following measures are carried out:

I. Applicability and Scope

A. The PA among FHWA, SHPO, ACHP, and PennDOT regarding implementation of the Program in Pennsylvania dated December 14, 2017, is superseded by, and replaced in its entirety with, this PA.

B. This PA sets forth the process by which FHWA, and/or the USACE, will meet its responsibilities under Section 106, with the assistance of PennDOT, for transportation projects under the Program or which require USACE Permits.

C. This PA applies to any project under the Program and/or which require USACE Permits. 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, the USACE, ACHP, SHPO, Tribes and Nations, PennDOT, and any consulting parties will be involved in such review.

D. If any project changes from federal-aid to state funding, and a USACE Permit is required, the USACE shall be the lead federal agency responsible for compliance with Section 106 of the NHPA. To the extent that the USACE deems applicable, the USACE will use studies, findings and determinations previously completed by PennDOT to document its own findings.

E. Any other designated lead federal agency may use PennDOT studies to support their findings and determinations under Section 106 of the NHPA.

II. General Requirements

A. In compliance with its responsibilities under the NHPA and as a condition of their award of any assistance under the Program, FHWA will require PennDOT to carry out certain requirements as assigned by this PA. In compliance with its responsibilities under the NHPA, and as a condition to issuance of a USACE Permit, the USACE will require PennDOT to carry out certain requirements as assigned by this PA. This authorization does not preclude FHWA's right, or the USACE's right, to take the lead in consultation among PennDOT, the SHPO, and other consulting parties, or to consult with federally recognized Tribes and Nations on a government-to-government basis. If PennDOT cannot comply with the requirements of this PA for any undertaking under the Program, or which requires a USACE Permit, the lead federal agency shall complete the Section 106 process under applicable laws and regulations.

B. Qualifications and Training

1) PennDOT shall employ professionally qualified personnel sufficient to implement this PA. PennDOT personnel, hereafter referred to as Cultural Resource Professionals (CRP), are employees of the Commonwealth of Pennsylvania who meet the *Secretary of the Interior's Professional Qualifications Standards* (SOI's Standards) in the fields of archaeology or architectural history. Use of consultants will be guided by Stipulation III.E.

2) PennDOT, with the assistance of the USACE and/or FHWA and the SHPO, will provide training for PennDOT personnel and their consultants relative to implementation of this PA as specified in Attachment A to this Agreement. PennDOT personnel responsible for review under Stipulation III will receive such training prior to implementing activities under Stipulation III.

C. Tribal Consultation

1) Every other year after this PA goes into effect, the FHWA and the USACE shall send a joint letter to the following Tribes and Nations: Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Pamunkey Indian Tribe; St. Regis Mohawk Tribe; Seneca-Cayuga Nation; Seneca Nation of Indians; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; and Tuscarora Nation. These letters will be individually addressed to the Tribal or Nation leaders of the listed Tribe or Nation. The letter will indicate that PennDOT has been assisting FHWA and the USACE regarding Section 106 responsibilities for undertakings, and advise the Tribes and Nations that if, at any time, they wish to consult directly with the lead federal agency on a government-to-government basis, they are available and ready to consult.

2) PennDOT may, on behalf of FHWA, and/or the USACE (as applicable), initiate consultation with Tribes and Nations for individual undertakings carried out under the provisions of this PA. PennDOT, on behalf of FHWA and/or the USACE, 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 Cultural Resources Handbook (Publication 689) or subsequent guidance. However, upon receipt of a request from any Tribe or Nation, or officially designated representative of a Tribe or Nation, to consult with FHWA or the USACE (as applicable) in lieu of PennDOT, FHWA or the USACE shall consult with that Tribe or Nation for the particular undertaking or program.

D. Historic Bridges

1) Pennsylvania's State Historic and Archaeological Resource Exchange (PA-SHARE) system will be utilized for determining the National Register of Historic Places (National Register) eligibility of previously evaluated bridges. The National Register eligibility of bridges will also be guided by the ACHPs *Program Comment for Actions Affecting Post-1945 Concrete and Steel Bridges*. With the exception of stone arch bridges, and closed spandrel concrete arch bridges, all other bridges or culverts

less than 21 ft. in length, as measured by waterway opening, shall not be considered individually eligible for the National Register except where a CRP determines, and/or the SHPO recommends, a bridge or culvert warrants further consideration under National Register Criterion C due to unusual, or exceptional features, or potential significance under National Register Criterion A and/or B. Stone arch bridges and closed spandrel concrete arch bridges that are less than 21 feet in length will be evaluated for National Register eligibility at the time of a project.

2) PennDOT, in consultation with the SHPO, will evaluate all bridge types and designs in PennDOT's Bridge Management System (BMS) not already evaluated by the SHPO and PennDOT within the last ten (10) years for loss, and according to current scholarship and, if deemed necessary by PennDOT and the SHPO, will reevaluate these bridge types and designs for National Register eligibility within four (4) years of the signing of this PA.

3) Every ten (10) years, PennDOT, in consultation with the SHPO, will develop a plan to review the population of bridges in BMS, which may result in the reevaluation of all, or a portion of, these bridges. PennDOT, and/or the SHPO, will prepare a written report summarizing the review, and will prepare a report for any bridge population reevaluation. PennDOT, and/or the SHPO, will provide the report(s) to the signatories to this PA and will make the report(s) available to the public.

E. PennDOT, and/or FHWA, will collaborate with the SHPO, and/or Tribes and Nations, in its transportation planning processes to develop projects and/or programs that incorporate historic preservation and tribal interests into transportation planning.

F. Pennsylvania Transportation and Heritage System

Pennsylvania Transportation and Heritage (PATH) is an online database and project management tool developed and managed by PennDOT to facilitate consultation with the SHPO, Tribes and Nations, consulting parties and the public. PATH is a geospatially referenced database of all projects in PennDOT's Multi-Modal Project Management System (MPMS), which consists of current and programmed PennDOT projects. All references in this PA to "submissions" and "notifications" is in reference to provision of information through this system unless otherwise noted. Paper copies of findings, forms, and other project information will be sent to any tribe, nation, or consulting party that is not willing, or able, to utilize PATH, or receive electronic communications.

G. Pennsylvania's State Historic and Archaeological Resource Exchange

To facilitate reviews conducted under this agreement and support long-term planning, the PA SHPO shall provide PennDOT, FHWA, and USACE staff operating under this agreement with access to PA-SHARE. PA-SHARE is the SHPOs online system for consultation and also provides access to available information on historic resources, archaeological sites, and surveys. In order to access PA-SHARE, PennDOT, FHWA, and USACE staff operating under this agreement will need to agree to the terms and conditions of the PA-SHARE Public Service Subscription Agreement. The PA-SHARE Public Service Subscription Agreement will coincide with the expiration date of the PA.

Archaeological privileges will be granted to individual professionals based on those who

meet the Secretary of the Interior's Professional Qualification Standards as an archaeologist. This access will allow a user to see archaeological site locations and the pre-contact probability model.

III. Project Review Responsibilities

PennDOT, the lead federal agency, and the SHPO, will observe the following requirements for all projects covered under this PA.

A. Level 1 Projects:

Projects meeting the Criteria listed in Appendix A to this Agreement and listed under "Appendix A: Level 1 Activities", have little potential to affect historic properties pursuant to 36 CFR 800.14(c) and may be reviewed by PennDOT District environmental staff (District Designee(s)). In the absence of a District Designee, or at the request of a District Designee, PennDOT CRPs may review projects listed in Appendix A: Level 1 Activities.

If a project, or an activity within the project, does not meet the criteria listed under Appendix A: Level 1 Activities, the project will be forwarded to the PennDOT CRPs for further review and evaluation.

- 1) Training – District Designees shall receive training in accordance with Attachment A prior to receiving authorization to review Level 1 project activities defined in Appendix A.
- 2) District Designees will exercise their best judgment to confirm that the conditions in Appendix A are being met and will document that no further review is necessary under Section 106. District Designees may consult with the PennDOT CRPs in reaching a decision. District Designee will document their decision in PennDOT's Categorical Exclusion Expert System (CEES), as part of the appropriate National Environmental Policy Act (NEPA) documentation.
- 3) Reporting of Appendix A: Level 1 Projects – PennDOT will create an electronic report of projects reviewed by the District Designees that meet the conditions in Appendix A; the report will be included in the annual report (see Stipulation X.D).

B. Level 2 Projects:

PennDOT CRPs will review the projects that meet the Criteria listed in Appendix A: Level 2 Activities. PennDOT CRPs may exempt such projects from further review under Section 106 pursuant to 36 CFR 800.14(c).

- 1) CRPs will document their decision in PennDOT's CEES as part of the appropriate NEPA documentation.
- 2) Reporting of Appendix A: Level 2 Projects – PennDOT will create an electronic report of projects reviewed by the CRPs that meet the conditions in Appendix A; the report will be included in the annual report (see Stipulation X.D).

C. For projects that do not meet the conditions of Stipulation III.A and III.B, and Appendix A, the PennDOT CRPs will be responsible for carrying out the following requirements.

1) FHWA, and/or the USACE (as applicable), authorize PennDOT to consult with the SHPO and other consulting parties on their behalf for the following purposes:

- a) soliciting and identifying consulting parties;
- b) conducting public involvement activities;
- c) establishing the area of potential effect (APE);
- d) determining the National Register eligibility of properties within the APE;
- e) determining effect; and initiating consultation on the resolution of adverse effects.

2) Non-Exempt Project Responsibilities:

a) Early Notification:

Prior to making a finding of effect for an undertaking, the PennDOT CRP will provide the SHPO and relevant Tribes or Nations with an Early Notification form for those projects that have the potential to affect historic properties where additional studies are needed prior to making a determination of effect. The Early Notification form will include a brief project description and a map location, as described in PennDOT's Cultural Resources Handbook.

b) Consulting Parties

In consultation with the SHPO, Tribes, and Nations, 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 properties affected by the undertaking, or other individuals or organizations with a demonstrated interest in the undertaking. As used in the stipulations of this PA, the term "consulting parties" refers to the consulting parties for an individual undertaking.

c) Tribal Consultation

PennDOT CRPs will initiate consultation with appropriate federally recognized Tribes and Nations following the protocol in Stipulation II.C and the procedures in PennDOT's Cultural Resources Handbook (Publication 689).

d) Involving the Public

Consistent with current state and federal laws and regulations and PennDOT policy,
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including PennDOT's Public Involvement Handbook (Publication 295), the Lead Federal Agency, 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.

PennDOT will make the Lead Federal Agency and the SHPO aware of any and all public interest, and/or controversy, as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to Tribes and Nations.

For projects that require an individual permit from USACE, the USACE public notice will contain a statement of the district engineer's current knowledge on historic properties and solicit comments and information necessary to evaluate the probable impact on the public interest (See 33 C.F.R. 325.3).

e) Area of Potential Effect

PennDOT CRPs will define the undertaking's APE as defined in 36 CFR 800.16(d). The APE will be established during a project field scoping. The APE established during a scoping field view may be a preliminary APE which will be developed and refined as the project progresses through preliminary engineering, in consultation with the SHPO, Tribes and Nations, and other consulting parties. The Lead Federal Agency may be consulted, or may request to be consulted with, in development of the APE.

The APE will be documented per Stipulation IV of this PA and the Cultural Resources Handbook.

(1) As a streamlining measure, PennDOT may combine consultation with the SHPO on the APE with consultation on determinations of eligibility and/or effect for projects classified as Categorical Exclusions (CE) and Environmental Assessments (EA) under NEPA.

(2) For projects requiring the preparation of an Environmental Impact Statement (EIS) under NEPA and the provisions of federal transportation legislation, the PennDOT CRP will consult with the SHPO on the APE early in project development prior to determinations of eligibility or effect.

f) Determine the Appropriate Level of Identification

(1) Based upon the best available background information gathered via a literature search, including but not limited to PA-SHARE, 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, consistent with 36 CFR 800.4(b)(1), the CRP will take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE. PennDOT will also seek information from consulting parties, as appropriate.

(2) When the PennDOT CRP determines that a field survey is necessary to identify historic properties, the CRP shall conduct, or cause to be conducted, a survey to identify historic properties. Such surveys will be conducted in a manner consistent with the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23), and, where appropriate, applicable SHPO guidelines, and the PennDOT Cultural Resources Handbook.

(3) Pursuant to 36 CFR 800.4(b)(2), and in consultation with the SHPO and other consulting parties, PennDOT may use a phased process to identify and evaluate above ground historic properties. In such cases, PennDOT will prepare, or cause to be prepared, a reconnaissance (also known as a "windshield") survey. Reconnaissance surveys are general project area reviews which establish the likely presence of historic properties within each alternative under consideration and will be documented in accordance with Stipulation IV and the Cultural Resources Handbook.

(4) 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 archaeological sites. In such cases, PennDOT will prepare, or cause to be prepared, an archaeological predictive model or archaeological sensitivity study to establish the likely presence of archaeological properties within each alternative under consideration and/or within inaccessible areas. A phased approach for the identification of archaeological properties may include deferral of archaeology under the following conditions utilizing a Deferral of Archaeology Testing form:

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

Once an alternative has been selected or access to property is gained, PennDOT shall comply with Stipulations III.C.2.e.(2), and III.C.2.f through III.C.2.i herein, as appropriate to determine the National Register eligibility of, and the effects of the project on, archaeological properties. If an adverse effect is determined, PennDOT will consult with the SHPO, Tribes and Nations, and consulting parties to seek ways

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to avoid adverse effects. If adverse effects cannot be avoided, PennDOT, in conjunction with the Lead Federal Agency, will consult to determine appropriate mitigation. Where a Deferral of Archaeology Testing form was utilized, PennDOT will capture the agreed upon mitigation in a Letter of Agreement or Memorandum of Agreement and share it with the Lead Federal Agency, the SHPO, Tribes and Nations and consulting parties.

When PennDOT wishes to use a phased identification and evaluation process for archaeological properties utilizing a deferral of archaeology form, but none of the above conditions apply, and/or the project will be having an adverse effect on above ground historic properties, a project-specific programmatic agreement will be prepared for the undertaking pursuant to 36 CFR 800.14(b).

g) Determination of Eligibility

(1) When PennDOT CRPs identify properties that may be eligible for the National Register of Historic Places, the CRPs will apply the National Register criteria following National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation* and the Secretary of the Interior's *Standards for Evaluation* (48 FR 44723-26). The PennDOT CRPs may consult with the SHPO and the Lead Federal Agency for the project 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 procedures in the Cultural Resources Handbook and any tribal agreements that are in place at the time. 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 boundaries following the guidance in National Register Bulletin 21, *Defining Boundaries for National Register Properties*. Due to the passage of time, the CRPs may also reevaluate properties.

(2) PennDOT CRPs will prepare documentation according to Stipulation IV and the Cultural Resources Handbook. For undertakings that will not affect historic properties, consultation with the SHPO on determination 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 Stipulation III.C.2.i.(2) apply or when Stipulation III.C.2.j applies. This consultation may be completed as a separate step or combined with the finding of effect. The documentation will be provided to the Tribes and Nations, consulting parties, and made available to the public.

h) No Historic Properties Affected

If the PennDOT CRPs determine that either there are no historic properties within the APE, or historic properties are present but will not be affected by the undertaking, the PennDOT CRPs shall issue a finding of No Historic Properties Affected through PATH. The PennDOT CRPs will document their finding according to Stipulation IV and the Cultural Resources Handbook and will notify the SHPO, the Lead Federal Agency, Tribes and Nations, and other consulting parties that a finding has been made and make the documentation available for public inspection prior to approving the undertaking. Except when dispute resolution in Stipulation XI is invoked, PennDOT may consider Section 106 concluded.

i) No Adverse Effect

(1) For those undertakings where historic properties may be affected, the PennDOT CRPs shall apply the criteria of adverse effect in accordance with 36 CFR 800.5. If the effect of the undertaking will not be adverse, the PennDOT CRPs will propose a finding of No Adverse Effect and will document their finding according to Stipulation IV and the Cultural Resources Handbook. The CRPs will submit the finding into PATH. PennDOT shall seek and consider the views of the Tribes and Nations, and other consulting parties, and will make its finding available for inspection by the public. If a Tribe or Nation, a consulting party, or member of the public objects to the finding within 30 days, the dispute resolution process in Stipulation XI will be applied. Except when dispute resolution in Stipulation XI is applied, PennDOT may consider Section 106 concluded.

(2) The PennDOT CRP will notify the Lead Federal Agency and will request the concurrence of the SHPO on findings of No Adverse Effect if they prefer but always under the following conditions:

- (a) Rehabilitation projects where the finding of No Adverse Effect is based on the proposed work being consistent with Secretary of Interior's Standards for rehabilitation,
- (b) When there is public controversy on historic preservation issues,
- (c) When a consulting party, FHWA, the USACE, a tribe, or nation requests the SHPOs concurrence.

If the SHPO objects to 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. If the SHPO fails to respond within the review period PennDOT may consider the Section 106 concluded, except where consulting party or public comments are received.

j) Adverse Effect

(1) If the PennDOT CRPs determine that the undertaking will have an adverse effect on historic properties, PennDOT will issue a finding of Adverse Effect

into PATH and will document the finding according to Stipulation IV and the Cultural Resources Handbook. PennDOT CRPs will consult with the SHPO, Lead Federal Agency, Tribes and Nations, and any other consulting parties, to evaluate the Adverse Effect finding and/or discuss options that would avoid or minimize adverse effects. These parties will have 30 days to provide comment.

(2) PennDOT will notify the ACHP of the adverse effect finding through PATH. The ACHP will notify the CRP and the Lead Federal Agency within 15 days if they wish to participate in consultation; if the ACHP does not respond, the Lead Federal Agency and PennDOT will presume they do not wish to participate.

(3) The Lead Federal Agency will invite the ACHP to participate in consultation under any of the following conditions:

- (a) When the undertaking will adversely affect a National Historic Landmark, as defined in 36 CFR 65,
- (b) When the effects to historic properties are highly controversial or there is substantial public interest in the undertaking's effects on historic properties,
- (c) When PennDOT, the SHPO, the USACE, and/or FHWA are not able to reach agreement on the resolution of adverse effects.
- (d) When a programmatic agreement under 36 CFR 800.14 is proposed.

(4) If, after consultation, PennDOT determines that adverse effects cannot be avoided, PennDOT will consult with the Lead Federal Agency, SHPO, Tribes and Nations, the ACHP if participating, and other consulting parties, as appropriate, to resolve the adverse effect.

(5) Resolution with a Letter of Agreement:

If the Lead Federal Agency, 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 and/or do not have a role in fulfilling the mitigation, PennDOT may prepare and execute a letter of agreement (LOA; Attachment B). The execution of a LOA, and implementation of its terms, will document the FHWA and/or the USACE's compliance with Section 106 for that undertaking. The letter of agreement shall be signed by the authorized representatives of the Lead Federal Agency, SHPO, and PennDOT, and approved as to form and legality by PennDOT's Office of Chief Counsel. If the ACHP is participating in the project a LOA cannot be used.

(6) Resolution with a Memorandum of Agreement:

FHWA and/or the USACE shall resolve adverse effects through a Memorandum of Agreement in the following circumstances:

- (a) When one, or more, of the concurring parties has a role in fulfilling the mitigation and, therefore, would need to sign the agreement.
- (b) If a consulting party objects to the proposed resolution of adverse effects.
- (c) If the ACHP is participating in the project.

(7) Resolution with a project Programmatic Agreement:

As per Stipulation III.C.2).f(4), a project Programmatic Agreement must be prepared when PennDOT wishes to use a phased identification and evaluation process but none of the conditions for deferral of archaeology in Stipulation III.C.2).f.(3) apply. When adverse effects have been determined for above-ground historic properties in conjunction with use of a phased identification and evaluation process for archaeological resources, documentation of the phased approach and resolution of adverse effects must be through a project Programmatic Agreement.

D. Review by SHPO

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

E. Use of Consultants in Project Review

- 1) Consistent with 36 CFR 800.2(a)(3), PennDOT may use consultants to gather information, analyze data, and prepare documentation. Consultants performing work for PennDOT, FHWA, and/or the USACE pursuant to this agreement must meet, or be supervised by, a person or persons meeting the *Secretary of the Interior's Professional Qualifications Standards* in the fields of archaeology and architectural history, or related fields. PennDOT, or FHWA or the USACE, where applicable, will be responsible for all findings and determinations made under this PA.
- 2) Consultant staff meeting the *Secretary of the Interior's Professional Qualifications Standards* may be qualified to assume the role of PennDOT CRP by written approval from the PennDOT Cultural Resources Unit Manager, and upon completion of the training specified in Attachment A.
- 3) Consultant staff may assume the role of a PennDOT CRP in a temporary capacity

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

IV. Documentation

With the exception of projects covered under Stipulation III.A, III.B, and Appendix A, 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 all applicable laws, regulations, ordinances, Section 304 of the NHPA, and 36 CFR 800.11(c), PennDOT will ensure that PennDOT staff, 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.

B. Archaeology Site Location

The location of archaeological sites will typically qualify as exempt from the federal Freedom of Information Act (FOIA) and the state Right-to-Know-Law (RTKL). PennDOT, and any consultants assigned to act on behalf of PennDOT, will ensure that the location of all sites recorded during the course of project development will remain undisclosed to the public.

V. Standard Treatments

PennDOT, in consultation with FHWA, the USACE, 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, USACE, SHPO, and ACHP have agreed, in writing, to a standard treatment, PennDOT shall incorporate it into Appendix B of this PA, and the Cultural Resources Handbook, and may implement it, as appropriate, to avoid or resolve adverse effects. When the standard treatment would apply to properties of traditional cultural and religious significance to Tribes or Nations, PennDOT shall consult with appropriate Tribes or Nations in developing the standard treatment. A list of standard treatments is found in Appendix B.

VI. Treatment of Human Remains

If human remains, graves, or grave-associated artifacts are encountered during any Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 14

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 Lead Federal Agency if remains, graves, or grave-associated artifacts are found on federal or Tribal lands, or within 24 hours of the discovery if found on non-federal or non-Tribal lands and commence consultation to evaluate applicability of Section 106 of the NHPA. If Section 106 might apply, the Lead Federal Agency, or PennDOT, will concurrently notify the SHPO and any federally recognized Tribes and Nations that may attach religious or cultural significance to the affected property. If historic burials or cemeteries are encountered, PennDOT will follow procedures consistent with 9 Pa.C.S. § 101 et seq. PennDOT will also take into account the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA), any guidance provided by Tribes or Nations, 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 and follow the requirements of the NAGPRA. No activities which might disturb or damage the remains, graves, or grave-associated artifacts, will be conducted until the Lead Federal Agency, 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, the Lead Federal Agency 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 PHMC through its bureau of the State Museum of Pennsylvania (State Museum) or its designee. A copy of the appropriate final archaeological report prepared according to the SHPOs Guidelines for Archaeological Investigations in Pennsylvania will be included in the submission.
- B. When artifacts are recovered from property not owned by the Commonwealth, PennDOT will explain to the property owner the importance of artifact donation and will request that the owner sign a gift agreement donating the artifacts to the State Museum. If the property owner does not wish to donate the artifacts, PennDOT will complete the necessary analyses prior to returning the artifacts, and will submit all records to the State Museum. A copy of the appropriate final archaeological report will be included with the submission.
- C. FHWA, to the degree the project is federally funded, will fund activities necessary to prepare collections for disposition; PennDOT will fund activities necessary to prepare collections for disposition for state funded projects and will be responsible for any fees relevant to long term curation regardless of federal funding.

- D. Requests by Tribes or Nations, or local institutions to curate archaeological

collections will be considered on a case-by-case basis by the FHWA (for federally funded projects) and/or PennDOT in consultation with the State Museum.

VIII. Post-Review Discoveries

If previously unidentified historic properties are discovered after PennDOT has completed its review under this PA, or if an undertaking affects previously known historic properties in an unanticipated manner, the procedures under 36 CFR 800.13 will be followed. If the discovery is made during construction, the contractor shall immediately cease work in the area of the discovery and shall follow PennDOT Publication 408. When the discovery consists of human remains, graves, or grave-associated artifacts or other properties that may be of interest to federally recognized Tribes or Nations with ancestral ties to Pennsylvania, PennDOT will follow the procedures in Stipulation VI. Construction shall not resume in the area of the discovery until the Lead Federal Agency has complied with the requirements of 36 CFR 800.13.

IX. Emergencies

Pursuant to 36 CFR 800.12 for federally funded emergency projects, and 33 C.F.R. Appendix C, para. 14 for emergency projects with the USACE as the lead federal agency: in the event of an emergency declared by the President of the United States and/or the Governor of Pennsylvania, PennDOT and the Lead Federal Agency shall follow the procedures below.

A. Applicability – Emergency projects are defined as those projects defined in 23 CFR § 668.103 and 23 CFR § 668.109 and eligible for Emergency Relief (ER) funds.

B. Covered Activities

1) Type 1 activities are emergency work activities and include immediate rescue and salvage operations conducted to preserve life and property, repair to existing infrastructure, and other activities necessary to restore or maintain essential traffic, minimize the extent of damage, and/or protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)]. Type 1 emergency activities must be completed within 180 days of the event and are 100% federally funded.

a) If possible, the CRP will visit the project site and provide advice on measures to avoid adverse effects, or to minimize or mitigate adverse effects to historic properties (properties listed in, or eligible for listing in, the National Register of Historic Places).

b) The CRP shall work closely with the work crews to ensure all reasonable measures are implemented.

2) Type 2 emergency activities are permanent work activities, and defined as all other emergency projects not covered under Type 1 where the repair or reconstruction work

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will be commenced within two years of the declaration, as specified under the emergency repairs provisions of the Federal-Aid Highway Program (Title 23 United States Code §125). Pursuant to Title 23 CFR 771.117(c)(9), this includes the repair, reconstruction, restoration, retrofitting or replacement of any road, highway, or bridge in operation or under construction when damaged, and the action occurs within the existing right-of-way, and in a manner that substantially conforms to the preexisting design, function, and location as the original. If the NEPA approval for an emergency project includes a permanent repair under CE 1a Item 9, and is otherwise not exempt, PennDOT may request an expedited review by the SHPO. Notifications will clearly indicate that the project is an emergency action pursuant to a declared emergency. PennDOT and the SHPO will negotiate a review time that is mutually agreeable to both parties; such negotiation can include groups of projects. PennDOT will make reasonable effort to consult with the public and property owners.

X. Annual Review and Monitoring

A. The USACE and/or the FHWA will monitor activities carried out pursuant to this PA within their jurisdiction in consultation with the ACHP and SHPO. PennDOT shall cooperate with any party in carrying out any monitoring effort.

B. PennDOT, the ACHP, and/or the SHPO may each establish its own internal monitoring program.

C. PennDOT will meet with the SHPO annually, or as requested by either the SHPO or PennDOT, to review the implementation of this PA, to discuss projects, or to suggest improvements. Any unresolved issues or recommendations for improvement or modifications to the implementation of this PA will be forwarded to the FHWA, the USACE, 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 and a list of projects exempted under Appendix A. The report may also identify issues and make recommendations for improving the implementation of this PA. PennDOT will submit the report to the signatories of this PA within 90 days from the end of the reporting year and make the report available on its cultural resource's website. The report will serve as the basis for any annual review of this PA that is conducted.

E. Within three months of receipt of the annual report, the FHWA, the USACE, ACHP, SHPO, and PennDOT will consult, if desired by any of the parties, to review implementation of the terms of this PA. The review, to the degree undertaken, will include an assessment of PennDOT qualified staff to ensure that adequate staffing is maintained to implement this PA. The parties may conduct an assessment of the program. Should the assessment result in evidence that the requirements of this PA are not being met, the parties will meet to develop corrective measures. If an individual PennDOT District fails to meet the requirements of this PA, the USACE and/or the FHWA may suspend that District from participating in this PA; in that case the USACE and/or the FHWA, or the PennDOT Central Office Cultural Resource Unit will be responsible for carrying out the requirements of 36 CFR Part 800 pursuant to this PA for that District, for the duration of the suspension.

XI. Dispute Resolution

A. Except as provided in Stipulation XI. B (below), should any party to this PA, or a consulting party on an individual undertaking covered by this PA, object within 30 days to any actions proposed or findings submitted for review, PennDOT shall notify the Lead Federal Agency and continue to consult with the objecting party(ies) to resolve the objection. If PennDOT determines that such objection(s) cannot be resolved, it shall request the Lead Federal Agency's assistance in resolving the objection. If the Lead Federal Agency determines that the objection remains unresolved, the Lead Federal Agency 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 the Lead Federal Agency on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to this PA, will be taken into account by the Lead Federal Agency 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, the Lead Federal Agency may render a decision regarding the dispute. In reaching its decision, the Lead Federal Agency will take into account all comments regarding the dispute from the parties to this PA.
- 3) The Lead Federal Agency's, and PennDOT's, responsibility to carry out all other actions subject to the terms of this PA that are not subject of the dispute remain unchanged. The Lead Federal Agency will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The Lead Federal Agency decision will be final.

B. If the SHPO objects to a National Register eligibility determination made by PennDOT or the Lead Federal Agency pursuant to this PA, and that objection cannot be resolved through consultation among the Lead Federal Agency, SHPO, and PennDOT, or if the ACHP so requests, the Lead Federal Agency 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 PA and the objection cannot be resolved through consultation with that party, the Lead Federal Agency, 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 of the signatories of this PA, may request that it be amended, whereupon the signatories shall consult to consider such amendment. Authorized representatives of all the signatories shall sign the amendment; PennDOT's Office of Chief Counsel, PHMC's Office of Chief Counsel, the Pennsylvania Governor's Office of General Counsel, and the Pennsylvania Office of Attorney General shall approve it as to legality and form.

B. The lists of exempt activities in Appendix A and the Cultural Resources Handbook may

be modified by the mutual written consent of all signatories to the PA 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 this PA.

C. Any Attachment in this PA may be modified by the mutual written consent of the FHWA, USACE, PennDOT, and the SHPO and shall not require a formal amendment to this PA. Upon such agreed upon revisions, PennDOT shall provide the revised Attachment to all the parties to this PA.

D. Written consent of PennDOT may be provided by the Director of the Bureau of Design and Delivery or designee.

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, the Lead Federal Agency shall conduct individual project reviews pursuant to Section 106

XIV. Duration of the PA

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

FHWA, the USACE, PennDOT, SHPO, and the ACHP will review this PA every ten (10) years from the Effective Date for modifications or termination. If no changes are proposed and no party objects, the term of the PA will be extended for another ten years by written agreement of all signatories.

XV. Severability

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

XVI. Assignment

Except as provided herein, the responsibilities included in this PA may not be assigned by any party to this Agreement either in whole or in part, without the written consent of the signatories.

XVII. Signatures

This PA may be executed in counterparts, each of which shall be deemed an original and shall have the full force and effect as an original but all of which shall constitute one and the same instrument. This PA may be executed electronically.

XVIII. Notices

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

1) For ACHP: Director, Office of Federal Agency Programs, 401 F Street NW, Suite 308, Washington DC 20001-2637, Telephone Number: (202) 517-0200.

2) For FHWA: Director of Program Development, 228 Walnut Street, 5th Floor, Harrisburg, PA 17101, Telephone Number: (717) 221-4545

3) For PennDOT: Deputy Secretary for Highway Administration, 400 North Street, 8th Floor, Harrisburg, PA 17112, Telephone Number: (717) 787-6875.

4) For SHPO: Deputy SHPO, 400 North Street, 2nd Floor, Harrisburg, PA 17120, Telephone number (717) 787-4215.

5) For USACE, Baltimore District: Chief, Regulatory Branch, Baltimore District, 2 Hopkins Plaza, Baltimore, MD 21202.

6) For USACE, Philadelphia District: Commander, Philadelphia District, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390.

7) For USACE, Pittsburgh District: Commander, Pittsburgh District, 2200 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222-4186.

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

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

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:  _____

Sara C. Bronin, Chair

DATE: 2.17.2023

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

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____
Reid Nelson, Executive Director, Acting

FEDERAL HIGHWAY ADMINISTRATION

BY: ALICIA E NOLAN Digitally signed by ALICIA E NOLAN
Date: 2022.12.13
11:52:24 -05'00' DATE: _____
Alicia Nolan, Division Administrator

UNITED STATES ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT

BY: Wade B. Chandler DATE: 10 Aug 2022
Wade B. Chandler, Chief, Regulatory Branch

UNITED STATES ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT

BY: BRIGANTTI, RAMON BRIGANTTI, RAMON 1181985
263 Digitally signed by
BRIGANTTI, RAMON 1181985263
Date: 2022.08.22 17:26:57 -0400 DATE: _____
Lieutenant Colonel Ramon Brigantti, P.E., District Commander

UNITED STATES ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT

BY: Adam J. Czekanski DATE: 9/12/22
Colonel Adam J. Czekanski, District Engineer

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

BY: Andrea MacDonald DATE: 10/14/2022
Andrea MacDonald, Director
State Historic Preservation Office

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

BY: Christine A. Spangler Digitally signed by Christine A. Spangler
Date: 2022.10.06 13:25:14 -04'00' DATE: _____
Christine Spangler, P.E., Director
Bureau of Design and Delivery

OTHER CONCURRING PARTIES:
PENNSYLVANIA ARCHAEOLOGICAL COUNCIL

BY: Ira Beckerman
Ira Beckerman, President

DATE: 10/27/22

~~PRESERVATION PENNSYLVANIA~~

BY: _____ DATE: _____
~~Mindy C. Ford, Executive Director~~

Approved as to Legality and Form

BY: Neal Thomas Brofee
For PennDOT Chief Counsel

Digitally signed by Neal Thomas
Brofee
Date: 2022.10.31 18:28:37 -04'00'

DATE: _____

BY: M. J. [Signature]
For SHPO (PHMC) Chief Counsel

DATE: 10/18/2022

BY: Andrew Hanna
Deputy General Counsel

2022.11.08
15:47:35 -05'00'

DATE: _____

BY: David E. Stover
Deputy Attorney General

Digitally signed by David E. Stover,
Senior Deputy Attorney General
Date: 2022.11.28 15:21:33 -05'00'

DATE: _____

APPENDIX A

Exempted Activities

PennDOT District Designees and/or Cultural Resource Professionals (CRP) may review and determine that undertakings are exempt from further review under Section 106 of the National Historic Preservation Act, provided that the undertakings meet all the criteria below, and are limited to the activities listed under Level 1 and Level 2. District Designees may only review Level 1 project activities. If a District lacks a Designee, or at the preference of a District, the CRPs will review Level 1 activities. Level 2 project activities may only be reviewed and exempted by the CRPs.

Criteria for all Exempted Activities

The undertaking must be classified as categorically excluded under FHWA's National Environmental Policy Act Regulations and the following criteria must apply:

- The undertaking is limited to the activities specified under Level 1 and 2 below;
- The undertaking is on an existing transportation facility;
- The undertaking is not within or adjacent to a National Historic Landmark or National Park, or property under the jurisdiction of the National Park Service;
- The undertaking has no known public controversy based on historic preservation issues; and
- The undertaking requires no more than 3.6 meters (12 feet) of new right-of-way and/or new permanent easement beyond the existing right-of-way and/or existing permanent easement at its widest point, on each side of the road, rail bed, existing trail or pedestrian facility.

Level 1 Activities

A. Projects which may be determined Exempt by District Designee or CRP

- 1) Activities within the Existing Roadbed, Disturbed Median or Disturbed Interchange
 - a) Reconstruction of the existing roadbed (including existing shoulders), provided in-kind or compatible modern materials are used. Reconstruction may include, but is not limited to: resurfacing; restoration; rehabilitation; surface treatments; milling and grooving; installation of new drainage pipes within the roadbed. This includes all pavement preservation, maintenance betterments and roadway rehabilitation activities under Stipulation 1 of the Programmatic Agreement between the FHWA and PennDOT for Bridge, Roadway and Non-Complex Projects (BRPA). This also includes installation of pavement markings (both normal and raised) and snow and ice detectors.
 - b) Creation of turning lanes or crossovers within the existing roadbed or disturbed median.

- c) Removal or replacement of existing guide rail.
 - d) Installation of new guiderail provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not eligible for listing on the National Register of Historic Places (NR).
 - e) Installation of new, or replacement of, median barriers or median guide rail.
 - f) Activities within existing disturbed highway interchanges.
- 2) Rehabilitation of existing at-grade railroad crossings provided there is no change in grade.
 - 3) Drainage improvements, including installation, replacement or rehabilitation, and cleaning activities associated with existing drains, dikes, headwalls, culverts with an opening 8 feet or less in width, pipes and storm sewers.
 - 4) Bridge Projects

Rehabilitation or preservation of bridges (including culverts over 8 feet), that are less than 50 years old, previously determined not individually eligible, or categorically not individually eligible pursuant to Stipulation II.D of the Statewide FHWA and USACE delegation programmatic agreement (Delegation PA). This includes all preservation activities under Part B, Stipulation 2 of the BRPA and all bridge rehabilitation activities under Part B, Stipulation 1 of this agreement (activities 2 through 10) except for activity 2 as it relates to the replacement of bridge parapets and activity 9 as it relates to bridge beautification activities. Bridge rehabilitation projects involving the replacement of parapets on bridges that are over 50 years old, regardless of the individual NR eligibility status of the bridge, must be reviewed by the District CRP and may only be exempted by the CRP. Bridge beautification activities must be reviewed by the District CRP. In-kind bridge curb and gutter replacement activities, however, are exempt activities.
 - 5) Minor widening or minor changes in alignment provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible, and there are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE.
 - 6) Signs, Lighting, Traffic Signals, and other Roadway Appurtenances
 - a) Installation or upgrade of regulatory signs, and railroad warning signs and devices; or upgrade of advisory signs.

- b) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers and/or noise walls. Exception: when in a city, borough, or town, the area must have been previously determined to be ineligible as a historic district.
- c) Installation of new lighting, fencing, retaining walls, traffic signals, advisory signs, barriers and/or noise walls, provided that all standing structures visible to and from the work limits are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible.
- d) Installation or replacement of Intelligent Transportation System (ITS) cameras and devices, and electronic advisory signs, including Dynamic Variable Message Sign structures.

7) Sidewalks and Curbing

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

8) Transportation Enhancement/Safe Routes to School Projects

- a) Streetscape improvement activities limited to planting of trees and installation of non-permanent amenities such as bike racks, trash receptacles, and benches.
- 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 PA-SHARE system, 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 riprap, etc.), provided there are no additional ground disturbing activities and access to the stream is located within a previously disturbed area. Replacement of existing gabion baskets can be used under this exemption where 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 NR eligible. This exemption does not include placement of new gabion baskets where gabion baskets did not exist.

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 PA-SHARE .

15) Clean-up and restoration of roadway to pre-existing conditions for hillside slumps and slides; slope stabilization activities within existing right-of-way.

Level 2 Activities

B. Projects Exempted by the Cultural Resource Professional

The District CRP may review and determine exempt the projects below provided they meet the overall criteria outlined above.

The CRP exemptions will be based upon a scoping field view and/or the PennDOT “video log” of the project area and/or background research (including, but not limited to PA-SHARE, and historic maps).

1. Bridge Replacement/Removal Projects

The District CRP may review and exempt bridge replacement projects (including culverts over 8 ft.) provided that:

- a) The structure is less than 50 years old, the structure is categorically not NR eligible per Stipulation II.D, or previously determined not NR eligible, and remains not NR eligible in the documented opinion of the CRP;
- b) The structure is being replaced on existing alignment;
- c) All standing structures within the project APE are less than 50 years old, or all properties over 50 years old were previously determined not NR eligible and remain

not NR eligible in the opinion of the CRP, or all properties over 50 years old are not NR eligible in the opinion of the CRP, and the project is not within, or immediately adjacent to, a NR eligible, or potentially NR eligible, historic district;

- d) There are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE , or visible evidence on the ground surface in the APE; and
- e) The District CRP for Archaeology has determined that any temporary construction easements associated with the project have been previously disturbed. If any temporary construction easement is determined to have a high probability for archaeological sites, and geotextile and fill will be used as a protective measure in lieu of archaeological testing, the exemption cannot be applied. The CRP must follow the procedures in Appendix B of the Delegation PA for application of the standard treatment.

2) Bridge Rehabilitation or Preservation Projects

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

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

Installation of new guiderail, provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.

- 4) Minor widening or minor changes in alignment provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP and there are no known archaeological sites within the project area of potential effects, as determined from PA-SHARE, or visible evidence on the ground surface in the APE.

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

- a) Upgrade or replacement of modern (estimated to be less than 50 years old) lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls in an historic district, and/or where other historic properties are present in the APE, provided that the upgrade or replacement is in-kind in general appearance.

- b). Upgrade or replacement of over 50-year-old lighting (mast heads and/or poles),

fencing, retaining walls, traffic signals, barriers, and/or noise walls provided, in the opinion of the CRP, none of these aforementioned elements being upgraded/replaced are individually eligible and there is neither an historic district nor other historic properties in the APE.

- c) Installation of new lighting (mast heads and/or poles), fencing, retaining walls, traffic signals, barriers, and/or noise walls, as well as new advisory signs, provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
- 6) Sidewalks and Curbing
- a) Installation of new sidewalks and/or curbing, and/or bulb-outs provided that any structures over 50 years old in the APE are not NR eligible in the opinion of the CRP.
 - b) Construction of sidewalk improvements in the form of drainage cuts or curb cuts made under the Americans With Disabilities Act and guidance in PennDOT Design Manual 2 Publication 13M), provided that the curb cuts are determined to have no effect on any eligible or listed historic district or other NR eligible or listed property in the APE.
- 7) Stream stabilization and restoration activities involving the replacement of, or placement of new (not previously in place), gabion baskets where all standing structures in the APE are not NR eligible in the opinion of the CRP.
- 8) Appendix A activities of the Federal Railroad Administration Section 106 Program Comment for Rail Rights-of-Way. This includes, but is not limited to, Activity B.8: "Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction". This also includes Activity E.5: "in-kind rehabilitation or replacement of grade-separated crossings of other transportation modes (highways, local roads, pedestrian underpasses). This does not include modifications to existing grade separation structures (e.g., bridges, overpasses) that would result in a substantial increase in height or overall massing or substantial change in appearance. Replacements must be substantially the same appearance and size as existing."
- 9) Emergency Activities involving repair to existing infrastructure and other activities necessary to restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities. This includes, but is not limited to, temporary bridges, roads, barriers, and Maintenance and Protection of Traffic (MPT) devices.

APPENDIX B

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 or timber matting 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, the USACE, SHPO, and consulting parties have been given the opportunity to provide their views.

1. Historic Bridges

- a) Marketing Historic Bridges
- b) Replacement of Bridges Only Significant as Contributing to a Historic District - The District CRP will work with the project team and consulting parties on a replacement design that is in keeping with the scale, materials, and massing of the historic

(contributing) bridge and may incorporate design elements which are in keeping with the characteristics that make the historic district eligible for the National Register (i.e. a Context Sensitive Design). Although the project would have an adverse effect, no other mitigation will be necessary for projects in which the only adverse effect is the replacement of a contributing bridge, except as negotiated with the community/consulting parties.

ATTACHMENT A

Training Requirements

Note: To the extent possible, the training requirements will be offered as webinars.

1. Training for District Designees

a) **Basic Training** - A District Designee, specifically PennDOT environmental staff, must successfully complete the following training prior to receiving authorization to review activities covered under Appendix A of this PA:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- PennDOT training on Application of the PA, and the Cultural Resources Handbook, including an overview on tribal consultation; and
- SHPO training on Pennsylvania History Code, SHPOs online data management systems, and other Pennsylvania-specific topics (taken within 1 year of delegation).

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

- PennDOT's Cultural Resources Handbook Refresher. PennDOT and SHPO PA Refresher training will be offered annually, such as at the PennDOT Environmental Managers (EM) meeting. The refresher will address changes to guidance, regulations, and delegated responsibilities as well as current topics. This training will be made available as a webinar for those who cannot travel.

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

a) **Basic Training** - 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 successfully complete the following training:

- Section 106 course provided by National Highway Institute (Beyond Compliance: Historic Preservation in Transportation Project Development, NHI 142049), ACHP Section 106 Essentials, or equivalent;
- PennDOT training on the Application of this PA and Cultural Resources Handbook, including Tribal consultation; and
- SHPO training on Pennsylvania History Code, SHPOs online data management systems, relevant historic context, and other Pennsylvania-specific topics. The training

Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 31

will allow for interaction with SHPO staff.

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

- PennDOT refresher on the Application of the PA and Cultural Resources Handbook and/or special topic meetings/webinars relevant to the application of this PA as determined/documented by PennDOT's Cultural Resources Section Manager.

In order to maintain delegation, CRPs, and Consultants under Management Contract must successfully complete the following training **every two years**:

- Attend a joint PennDOT and SHPO staff meeting. These meetings usually occur annually.
- Attend a minimum of two (2) PA SHPO and PennDOT approved sessions at the Statewide Conference on Heritage (when held) or other conference or training relevant to historic preservation, as determined/documented by PennDOT's Cultural Resources Section Manager.

3. Changes to the Section 106 regulations and guidance

Whenever major changes to 36 CFR 800 become effective, or the ACHP updates relevant guidance, or issues relevant program comments, District Designees and Cultural Resource Professionals will participate in training on the new regulations or guidance within a year of when it goes into effect.

ATTACHMENT B

Letter of Agreement Template

(FHWA lead example; USACE to be substituted for FHWA for USACE lead projects)

LETTER OF AGREEMENT

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, AND THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER, REGARDING THE _____ PROJECT IN township/borough/City, _____ COUNTY, PENNSYLVANIA

WHEREAS, the Federal Highway Administration (“FHWA”), the U.S. Army Corps of Engineers (“USACE”), the Advisory Council on Historic Preservation (“ACHP”), the State Historic Preservation Officer (“SHPO”) and the Pennsylvania Department of Transportation (“PennDOT”) on _____ 2022 executed a Programmatic Agreement (“PA”) regarding implementation of the Federal Aid Highway Program in Pennsylvania;

WHEREAS, PennDOT proposes to describe project (hereafter referred to as “the Project”);

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

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

WHEREAS, pursuant to Stipulation III.C.2.b of the PA, PennDOT has made an effort to seek consulting parties and the following have been accepted as consulting parties: name consulting parties;

WHEREAS, Stipulation III.C.2.j.5 provides for the preparation and execution of a Letter of Agreement (“LOA”) where there is agreement about measures to be taken to resolve adverse effects among the required parties;

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (“ACHP”) of
Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 33

the adverse effect finding and the ACHP has declined to participate in resolving the adverse effects of the Project;

NOW, THEREFORE, the FHWA, SHPO, and PennDOT agree that PennDOT will complete the following stipulations in order to mitigate the adverse effects of the Project on name adversely affected historic properties.

Stipulations

Personnel Qualifications:

PennDOT shall ensure that all archaeological work carried out pursuant to this LOA 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, and that all historic preservation work is carried out by, or under the direct supervision of, a person or person meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals (see http://www.nps.gov/history/local-law/arch_stnds_9.htm).

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.

Duration

This LOA will expire if its terms are not carried out within __ years from the date of its execution. Prior to such time the FHWA may consult with the other signatories to reconsider the terms of the LOA and amend it.

Termination

Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 34

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

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

This letter agreement does not supersede other provisions of the Amended PA, specifically:

VI. Treatment of Human Remains;

VII. Preparation of Archaeological Materials for Final Disposition;

VIII. Post-Review Discoveries;

IX. Dispute Resolution;

FEDERAL HIGHWAY ADMINISTRATION (*or U.S. ARMY CORPS OF ENGINEERS*)

By: _____ Date: _____

Name & Title: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Name & Title: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Name & Title: _____

Approved as to Legality and Form

By: _____ Date: _____

Pennsylvania FHWA/USACE/ PA SHPO/PennDOT Section 106 Programmatic Agreement – Page 35

APPENDIX 3 – DISPOSAL OF REAL PROPERTY AND LEASE AGREEMENTS PROGRAMMATIC AGREEMENT

Agmt. # 431018
EIN # 53-0204534

PROGRAMMATIC AGREEMENT

**BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION
AND
THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
FOR
THE DISPOSAL OF REAL PROPERTY
AND
LEASE AGREEMENTS/RENEWALS**

The Federal Highway Administration, Pennsylvania Division, hereinafter FHWA, and the Pennsylvania Department of Transportation, hereinafter PennDOT, have developed this Programmatic Agreement, hereinafter PA, to outline the policy and procedures for environmental processing of certain Class II Actions, Categorical Exclusions (CE), pursuant to the National Environmental Policy Act, hereinafter NEPA, as defined in 23 CFR 771.117 which normally are found to have no significant social, economic or environmental effects.

The FHWA hereby concurs in advance, on a programmatic basis, with PennDOT's designation that disposal of real property and lease agreement/renewal activities which satisfy the conditions and criteria of this PA, will not result in significant environmental impacts.

As outlined in this PA, PennDOT will determine and certify that an activity will not result in significant environmental impacts and document accordingly.

WHEREAS, the Division Administrator, FHWA, is the "Agency Official" responsible for compliance with the NEPA and implementing regulations (23 CFR 771.117); and

WHEREAS, PennDOT, as the statewide recipient of the federal-aid program, is responsible for compliance with federal laws and regulations pursuant to 23 CFR 1.36; and

WHEREAS, the disposal of real property is consistent with the Statewide Long Range Transportation Plan, the Statewide Transportation Improvement Program (STIP), and applicable Metropolitan or Rural Planning Organizations' Transportation Improvement Programs (TIPs) and Long Range Transportation Plans, and is exempt from regional air quality conformity determinations [40 CFR parts 51 and 93]; and

WHEREAS, the undertaking is confined to the disposal of excess right-of-way, the leasing of right-of-way or the renewal of an existing lease of right-of-way; and

WHEREAS, PennDOT will perform a field view of the parcel to be disposed or leased in order to confirm the site's characteristics and to assist in completing the *Disposition of Real Property and Lease Agreement/Renewal Categorical Exclusion Applicability Form*; and

March 1, 2006

WHEREAS, PennDOT Cultural Resource Professionals or District Designees will ascertain the likelihood, not presence, of historic properties (above and below ground) through use of the Cultural Resources Geographic Information System (CRGIS) or other readily available means for purposes of disclosing the potential; and

WHEREAS, if an eligible pre-historic or historic resource is known to be on/in the property, PennDOT will notify the Pennsylvania Historical and Museum Commission (PHMC) of the transfer pursuant to the State History Code and place or transfer a covenant on the property to ensure long-term preservation of the property's historic significance in compliance with Section 106; and

WHEREAS, PennDOT will consult with the U.S. Fish and Wildlife Service (USFWS), Pennsylvania Game Commission (PGC), Pennsylvania Fish and Boat Commission (PAFBC), and the DCNR Pennsylvania Natural Heritage Program (PNHP), Environmental Review Tool to ascertain the likelihood of threatened or endangered species for purposes of disclosing the potential; and

WHEREAS, PennDOT will consult readily available sources such as the Department of Environmental Protection's (DEP) eMap to ascertain the likelihood of hazardous or residual waste present on the site for purposes of disclosing the potential; and

WHEREAS, PennDOT will document the undertaking by completing the *Disposition of Real Property and Lease Agreement/Renewal Categorical Exclusion Form*; and

WHEREAS, a PennDOT Environmental Manager is qualified to approve the *Disposition of Real Property and Lease Agreement/Renewal Categorical Exclusion Form* on behalf of the PennDOT District Executive; and

WHEREAS, upon the successful completion and approval of the *Disposition of Real Property and Lease Agreement/Renewal Categorical Exclusion Form*, thereby fulfilling its obligation to disclose the characteristics of the parcel, PennDOT shall be held harmless from future activities on the parcel; and,

NOW, THEREFORE, the FHWA and PennDOT agree to the following stipulations in order to satisfy FHWA's NEPA responsibilities:

March 1, 2006

STIPULATIONS

Stipulation 1

It is understood that by the nature of the activity, there are no significant impacts to noise, air quality, sole source aquifer, historic properties, wetlands, endangered species or right-of-way issues or public controversy on environmental grounds. Under this agreement, pursuant to the 23CFR 771.117(d), disposal of real property (excess right-of-way) and lease agreements/renewals are documented without further approval or documentation provided the conditions and criteria of this PA are satisfied.

Based on the acceptance of the Categorical Exclusion Handbook, Publication 294, the disposal or lease of right-of-way is defined as a Level 1b activity. As such, no further approval from FHWA is necessary.

Stipulation 2

Upon successful completion and approval of the *Disposition of Excess Right-of-Way and Lease Agreement/Renewal Categorical Exclusion Applicability Form* found in Appendix A of this PA, the approval date of this Programmatic Agreement shall be the designated CE approval date for the subject project. The *Form* either can be completed and approved electronically or in hard-copy format. By completing and approving the *Form*, PennDOT certifies that the activity will not result in significant environmental impacts.

Stipulation 3

Documentation assembled by PennDOT to support any environmental findings resulting from anticipated impacts, including the *Disposition of Excess Right-of-Way and Lease Agreement/Renewal Categorical Exclusion Applicability Form*, will be maintained in the respective project file. This includes, but is not limited to documentation related to 36 CFR 800 and Endangered Species Act (ESA) [16 U.S.C. Section 1531, as amended] and 50 CFR 402.

Stipulation 4

If the scope of the proposed disposition of excess right-of-way activity changes, or previously unidentified environmental resources are identified before the transference of ownership or lease agreement, the Environmental Manager shall be notified, and will evaluate the need for additional environmental studies and disclosure to the future property owner or leasee. All findings shall be documented in the project file.

March 1, 2006

Stipulation 5

If at any time the District Environmental Manager establishes that this PA no longer applies to a specific project due to changes in scope of work activities or environmental impacts, the CE/EA Expert System form will be completed.

March 1, 2006

ADMINISTRATIVE CONDITIONS

1. **Applicability.** This agreement applies to disposition and lease/renewal of right-of-way that is administered by PennDOT and funded by the FHWA.
2. **Disputes.** It is the intent of the FHWA to become actively involved in the resolution of disagreements pertinent to findings of Section 106 eligibility and effects and Section 7 pursuant to the ESA, should they arise.
3. **Oversight.** FHWA maintains approval authority for actions involving the Interstate, including the execution of leases or deed transfers for Interstate associated properties. Per the stipulations of this PA, no further FHWA approval is required for NEPA compliance unless project conditions stipulate a Level 2 CEE, EA, or EIS.
4. **Monitoring.** The FHWA may monitor any activities carried out pursuant to this agreement. FHWA will cooperate with the PennDOT in carrying out these monitoring and review responsibilities.
5. **Amendments.** Any party to this agreement may request that it be amended and the request will be addressed within 30 days.
6. **Termination.** Any party to this agreement may terminate it by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreements on amendments or other actions that would avoid termination.

March 1, 2006

FEDERAL HIGHWAY ADMINISTRATION

for David W. Conger
James A. Cheatham, P.E.
Division Administrator

6/1/06
Date

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

M. Hogg
Richard H. Hogg, P.E.
Acting Deputy Secretary for Highway Administration

4/27/06
Date

Preliminary Approval:

MB
5/10/06 BY _____
Assistant Counsel

Date

APPROVED AS TO FORM AND LEGALITY

BY Michael H. Blume
Assistant Chief Counsel
for

5/11/06
Date

BY [Signature] 5/16/06
Deputy General Counsel

5/16/06
Date

BY [Signature]
Deputy Attorney General

5/25/06
Date

March 1, 2006

Appendix A
Disposal of Real Property and Lease Agreement/Renewal
Programmatic CE Applicability Form

Project Information	
MPMS#:	Agreement #:
County:	Project Name:
	Township:
SR, Section:	Grantee/Lessee Name:
	Segment/Offset:
Project Description	
Area Location	
Scope of Proposal	
Project scope consistent with approved Disposal Right-of-Way and Lease Agreement/Renewal PA? Y/N	
Resource Analysis	
<i>Answer as yes, no or likely. Additional comments can be noted</i>	
Presence of Wild or Stocked Trout streams	
Presence of High Quality/EV streams	
Presence of wetlands	
Presence of state or federal T&E species or habitat	
Presence of cultural resources	
If an eligible resource is present, PHMC provided notice of transfer	
Potential for public controversy on environmental grounds	
Presence of hazardous/residual waste	

Prepared by: _____ Date: _____

Environmental Manager: _____ Date: _____

FHWA (for Interstate associated real property) _____ Date: _____