

**MEMORANDUM OF AGREEMENT
AMONG THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE FEDERAL
HIGHWAY ADMINISTRATION, THE PENNSYLVANIA STATE HISTORIC
PRESERVATION OFFICER AND THE NEW YORK STATE HISTORIC PRESERVATION
OFFICER, PURSUANT TO 36CFR§800.6(b) REGARDING
S.R. 1011, SECTION 470, POND EDDY BRIDGE REPLACEMENT PROJECT
SHOHOLA TOWNSHIP, PIKE COUNTY, PENNSYLVANIA AND
TOWN OF LUMBERLAND, SULLIVAN COUNTY, NEW YORK**

WHEREAS, the Federal Highway Administration (FHWA), in coordination with the Pennsylvania Department of Transportation (PennDOT) and the New York State Department of Transportation (NYSDOT) plans a Project in Shohola Township, Pike County, Pennsylvania and the Town of Lumberland, Sullivan County, New York, to provide a structurally sound bridge to carry Pennsylvania S.R. 1011 over the Delaware River; and

WHEREAS, the FHWA plans to fund the Project to replace the existing Pond Eddy Bridge (PA Bridge Management System Number (PA BMS) BMS # 51 1011 0010 2574 and NYSDOT Bridge Identification Number (BIN) 5228710), a structure listed in the National Register of Historic Places, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §470f, and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the FHWA has completed a thorough alternatives analysis, including four bridge design type options considered for the Bridge Replacement Alternative, and concluded there is no feasible and prudent alternative to retain the historic bridge; and

WHEREAS, the Upper Delaware River is designated as scenic and recreational under the Wild and Scenic River Act (Act) enacted through the National Parks and Recreation Act of 1978 (PL 95-625, Section 704), as amended, and the existing Pond Eddy Bridge contributes to the scenic attributes of the Delaware River; and

WHEREAS, the Act required the drafting of a management plan titled "Upper Delaware Scenic and Recreational River Final Management Plan" dated 1986 (Management Plan), in which cultural resources management is referenced directly and which states that new paved four lane roads and bridges should not be constructed in the river corridor; and

WHEREAS, the Pennsylvania Division of the FHWA has assumed the lead federal agency responsibility per 36CFR§800.2(a)(2) and has consulted with the Pennsylvania State Historic Preservation Officer (PASHPO) and the New York State Historic Preservation Officer (NYSHPO) per 36CFR§800.3(c)(2); and

WHEREAS, the FHWA, in consultation with the PASHPO and NYSHPO, has established the Project's Area of Potential Effects (APE) as defined in 36CFR§800.16(d), to be an area of approximately 14,260 square meters (3.52 acres/1.42 hectares) extending 246 feet along the Delaware River, approximately 123 feet upstream and 123 feet downstream from the centerline of the existing bridge and 624 feet across the river, between Shohola Township, Pennsylvania and the Town of Lumberland, New York; and

WHEREAS, the APE takes into account potential effects (temporary and permanent) associated with

the Project and encompasses all potential direct and indirect impacts associated with the Project, including the construction of the bridge replacement and removal of the existing bridge; and

WHEREAS, the FHWA has initiated consultation with Federally recognized Indian Tribes that may attach religious and/or cultural significance to any affected property within the APE pursuant to 36CFR§800.3(f)(2), namely the Delaware Nation, the Delaware Tribe, the Eastern Shawnee Tribe of Oklahoma, the Oneida Nation of Wisconsin, and the Seneca-Cayuga Tribe of Oklahoma, and the Delaware Nation and Delaware Tribe have elected to participate in consultation and are invited to sign the Memorandum of Agreement (MOA) as concurring parties; and

WHEREAS, the FHWA, pursuant to 36CFR§800.2(c), has invited the participation of Section 106 consulting parties, engaged these parties in consultation, and invited the following consulting parties to sign this MOA as concurring parties: National Park Service (NPS), National Trust for Historic Preservation (NTHP), Preservation Pennsylvania, the Preservation League of New York, Friends of the Pond Eddy Bridge, the Upper Delaware Council, the Historic Bridge Foundation, Upper Delaware Preservation Coalition, Cumberland County Redevelopment Authority and Shohola Township; and

WHEREAS, the FHWA, pursuant to 36CFR§800.6(a)(1), invited the Advisory Council for Historic Preservation (ACHP) to participate in consultation, the ACHP accepted this invitation in a letter dated July 6, 2007, stating that *Criteria for Council Involvement in Reviewing Individual Section 106 Cases* are met "because this interstate project may present questions of policy or procedure for which ACHP involvement is required to move the consultation process forward", and the ACHP is therefore a signatory to this MOA; and

WHEREAS, the FHWA has completed a study to identify archaeological resources within the Project's APE, pursuant to 36CFR§800.4, this study resulted in the finding of no significant archaeological resources within the APE, and the Pennsylvania SHPO concurred in a letter dated April 9, 2004; and

WHEREAS,- the FHWA has identified the historic alignment of the Delaware & Hudson Canal (D&H Canal) within the northern portion of the APE, but its presence and condition could not be confirmed as it is currently under or has been incorporated into New York State Highway 97; and

WHEREAS, the FHWA, pursuant to 36CFR§800.4(c), has determined that the National Register-listed Pond Eddy Bridge (BMS # 51 1011 0010 2574 & BIN 5228710) is the only known historic structure within the APE; and

WHEREAS, the FHWA, pursuant to 36CFR§800.5, has determined that the Project, which will include the demolition and replacement of BMS # 51 1011 0010 2574 & BIN 5228710, the National Register-listed Pond Eddy Bridge, will have an adverse effect as described in the *Determination of Effect Report* (Valley Forge Laboratories, Inc. March 2006) and *Finding Documentation Report* (Skelly & Loy, Inc. May 2011); and

WHEREAS, the PASHPO, on May 2, 2006, and the NYSHPO on July 5, 2011, have concurred that the demolition and replacement of the bridge will be an adverse effect, and the FHWA issued a formal determination of Adverse Effect for the Project on June 21, 2006; and

WHEREAS, the FHWA has consulted with the ACHP, the PASHPO, the NYSHPO and other consulting parties to resolve the adverse effects of the Project on historic properties per 36CFR§800.6; and

WHEREAS, the FHWA and PASHPO have also invited the Pennsylvania Department of Transportation (PennDOT) and the NYSDOT to participate in the consultation and to sign this MOA as invited signatories, with the same rights with regard to seeking amendment or termination of the MOA as other signatories; and

WHEREAS, the FHWA has involved the public as required under the National Environmental Policy Act (NEPA) of 1969, as amended [16 U.S.C 470] and its implementing regulations in a manner consistent with PennDOT's Public Involvement Procedures; and

WHEREAS, PennDOT initiated preliminary marketing efforts to solicit potential interest in the use and or re-use of the Pond Eddy Bridge, and two interested parties were identified; and

NOW, THEREFORE, the FHWA, ACHP, PASHPO, NYSHPO, PennDOT and NYSDOT agree that the FHWA shall ensure implementation of the following stipulations in order to take into account the effects of the undertaking on historic properties.

Stipulations

FHWA shall ensure that the following stipulations are carried out:

I. Historic Properties

A. Marketing the Reuse of Bridge

Prior to PennDOT authorizing work to proceed on removal of the historic Pond Eddy Bridge, the bridge will be auctioned by the Commonwealth of Pennsylvania, Department of General Services (DGS) to the highest bidder who commits to moving and preserving the historic bridge. PennDOT will provide DGS the contact information of interested parties identified during the marketing process so that DGS can add them to their auction contact list. In the event that a group purchases the bridge, PennDOT will carefully dismantle the bridge and set the bridge aside at or near the project construction site. The party assuming ownership will then have 90 days to remove the bridge. The sales agreement will include a requirement that the buyer shall be responsible for rehabilitating the bridge while maintaining its historic characteristics and a requirement to consult with the SHPO prior to making any alterations to the significant features of the bridge.

B. Recordation

PennDOT, in consultation with the PASHPO, NYSHPO and the FHWA, will ensure that the Pond Eddy Bridge will be documented to Historic American Engineering Record Level II Standards. This documentation will be submitted to the PASHPO and NYSHPO for archival retention and made available for appropriate local repositories in Pennsylvania and New York to be designated by the PASHPO and NYSHPO, respectively.

C. Pond Eddy Bridge Design Advisory Committee

1. PennDOT will form a Design Advisory Committee (DAC) for the project, consisting of no more than 13 members. Membership will be drawn from the following groups:

NPS, NTHP, Pike County, Shohola Township, PASHPO, NYSHPO, Preservation Pennsylvania, the Preservation League of New York, Friends of Pond Eddy Bridge, the Historic Bridge Foundation, the Upper Delaware Preservation Coalition, Upper Delaware Scenic Byway Inc., and the local public.

2. PennDOT, in coordination with NYSDOT, will develop structure type and configuration options in accordance with PennDOT Smart Transportation and Design guidance, including but not limited to: PennDOT Design Manual Part 2: Highway Design (Publication 13M), as supplemented by the American Association of Highway and Transportation Officials (AASHTO) Green Book (2001); PennDOT Design Manual Part 4: Structures (Publication 15M); FHWA Flexibility in Highway Design; PennDOT Strike-off Letter 432-08-03; NYSDOT Bridge Manual(Metric), 4Edition, January 2008; NYSDOT LRFD Bridge Design Specifications US Customary-2010; and NYSDOT Highway Design Manual (current version) for the new bridge design among those already analyzed for the Replacement alternative and identify appropriate, context-sensitive aesthetic and architectural treatments.
3. The DAC will hold a series of three design workshops so that the Committee members can consider this information, with the goal of recommending the preferred structure configuration and aesthetic features. FHWA, PennDOT, and NYDOT will provide necessary engineering and design criteria to assist the DAC in its task.
4. FHWA, in coordination with PennDOT and NYSDOT, will incorporate the recommendations of the DAC, as appropriate, and select a context sensitive design alternative to develop as the final design.

II. Archaeological Resources

A. Construction Monitoring:

1. FHWA, in coordination with PennDOT shall ensure that a plan for archaeological monitoring during construction activities within the area presumed to be the location of the D & H Canal is prepared by an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards per 36 CFR §61. The plan shall include procedures for the identification, evaluation and documentation of any features of the D& H Canal that may be exposed as a result of earthmoving, along with a communication protocol for notification and consultation among the FHWA, ACHP, PASHPO, NYSHPO, PennDOT and NYSDOT to consider appropriate treatment for any discoveries of archaeological properties during construction. The plan shall be reviewed and approved by the NYSHPO, PASHPO, NYSDOT, PennDOT, ACHP, and FHWA prior to its implementation.

III. Changes in Project Scope

- A. In the event of any changes to the Project scope, including the addition of a proposed boat launch or any other mitigation for the Project's environmental impacts, the following measures will be implemented, in consultation with the PASHPO, NYSHPO, and ACHP.

1. PennDOT and FHWA, in coordination with NYSDOT, will assess and revise the Project APE as needed to incorporate any additional areas that have the potential to affect historic properties.
2. PennDOT and FHWA, in coordination with NYSDOT will carry out additional investigations to identify historic architectural and archaeological properties that may be affected.
3. PennDOT and FHWA, in coordination with NYSDOT, will assess the Project's effect on any new historic properties, and explore measures to avoid, minimize, or mitigate effects on these properties.
4. PennDOT and FHWA, in coordination with NYSDOT, will ensure the preparation of appropriate reports and documents, notify Section 106 consulting parties, including Indian tribes, of any changes in the Project's effects on historic properties, and provide an opportunity for review and comment.
5. If a change in project scope results in additional adverse effects to historic properties, FHWA will consult with the other parties to amend the MOA in accordance with Stipulation IV.C. of this MOA.

Administrative Conditions

B. Personnel Qualifications

PennDOT shall ensure that all archaeological work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, *The Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48FR 44738-9), and that all historic preservation work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, *The Secretary of the Interior's Professional Qualifications Standards for Architectural Historian Professional* (48FR44738-9).

C. Late Discoveries

If any historic properties are discovered or unanticipated effects to historic properties are found during the implementation of this undertaking, all work will cease in the vicinity of the discovery and PennDOT shall immediately notify the FHWA and NYSDOT. In compliance with 36 CFR §800.13, FHWA shall notify within 24 hours the ACHP, the PASHPO, the NYSHPO, and, if applicable, federally recognized Indian tribes that attach religious and/or cultural significance to the affected property. The PASHPO, NYSHPO, the FHWA, PennDOT, NYSDOT and Tribal representatives, as appropriate, may conduct a joint field view within 72 hours of the notification to the FHWA. The FHWA, in consultation with the appropriate parties, will develop a treatment plan for the discovery prior to the resumption of construction activities in the area of the discovery.

D. Amendments

Any signatory to this Memorandum of Agreement may propose to the FHWA that this Memorandum of Agreement be amended, whereupon the FHWA shall consult with the other

parties to this Memorandum of Agreement to consider such an amendment. The amendment will be effective on the date a copy is signed by all of the original signatories.

E. Resolving Objections

1. Should any party to this Memorandum of Agreement object in writing to the FHWA regarding any actions carried out or proposed with respect to the Project or implementation of this Memorandum of Agreement, the FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP, including the FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - a. Advise the FHWA that the ACHP concurs in the FHWA's proposed response to the objection, where upon the FHWA shall respond to the objection accordingly;
 - b. Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - c. Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR §800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by the FHWA in accordance with 36 CFR §800.7(c)(4) and Part 111(1) of NHPA.
2. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.
3. The FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the FHWA's responsibility to carry out all actions under this Memorandum of Agreement that are not the subjects of the objection shall remain unchanged.

F. Resolution of Objections by the Public

At any time during implementation of the measures stipulated in this Memorandum of Agreement, should any objections pertaining to any such measure or its manner of implementation be raised by a member of the public, the FHWA shall notify the parties in this Memorandum of Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Memorandum of Agreement to resolve the objection.

G. Review of Implementation

If the stipulations have not been implemented within five years after execution of this Memorandum of Agreement, the parties to this Agreement shall review the Memorandum of Agreement to determine whether revisions are needed. If revisions are needed, the parties to this Memorandum of Agreement shall consult in accordance with Stipulation

IV.C. to amend this Agreement.

H. Sunsetting/Duration

If the terms of this Memorandum of Agreement have not been implemented by seven years from the date of this signed Memorandum of Agreement, this Memorandum of Agreement shall be considered null and void. In such event, the FHWA shall notify the parties to this Memorandum of Agreement, and if it chooses to continue with the Project, shall re-initiate review of the Project in accordance with 36 CFR § 800.

I. Termination

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

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

Execution of this Memorandum of Agreement by the ACHP, the FHWA, PASHPO, NYSHPO, PennDOT, and NYSDOT, and implementation of its terms, evidences that the FHWA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Bowler Date: 12/6/11

FEDERAL HIGHWAY ADMINISTRATION

By: [Signature] Date: 11/10/11

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: Jean Rutler Date: 8/24/2011

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NEW YORK STATE DEPARTMENT OF TRANSPORTION

By: _____ Date: _____

CONCURRING PARTIES:

NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By: _____ Date: _____

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By: _____ Date: _____

DELAWARE TRIBE OF OKLAHOMA

By: _____ Date: _____

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: _____ Date: _____

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: Radia Rajj Date: 11/17/2011

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: *Russell A. Purpoint DSHPO* Date: 10/28/11

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: *Bruce E. Thompson* Date: 9/31/11

NEW YORK STATE DEPARTMENT OF TRANSPORTION

By: *John R. Wilman* Date: 10/5/11

CONCURRING PARTIES:

NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By: _____ Date: _____

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By: _____ Date: _____

DELAWARE TRIBE OF OKLAHOMA

By: _____ Date: _____

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: _____ Date: _____

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: _____ Date: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NEW YORK STATE DEPARTMENT OF TRANSPORTION

By: _____ Date: _____

CONCURRING PARTIES:

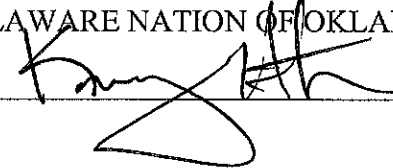
NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By: _____ Date: _____

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By:  _____ Date: 10-18-2011

DELAWARE TRIBE OF OKLAHOMA

By: _____ Date: _____

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: _____ Date: _____

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: _____ Date: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NEW YORK STATE DEPARTMENT OF TRANSPORTION

By: _____ Date: _____

CONCURRING PARTIES:

NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By: _____ Date: _____

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By: _____ Date: _____

DELAWARE TRIBE OF OKLAHOMA

By: *Brice Obermyer* Date: *8/25/11*

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: _____ Date: _____

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: _____ Date: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

CONCURRING PARTIES:

NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By:  _____ Date: 10/18/2011

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By: _____ Date: _____

DELAWARE TRIBE OF OKLAHOMA

By: _____ Date: _____

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: _____ Date: _____

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: _____ Date: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

INVITED SIGNATORIES:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

NEW YORK STATE DEPARTMENT OF TRANSPORTION

By: _____ Date: _____

CONCURRING PARTIES:

NATIONAL PARK SERVICE, UPPER DELAWARE RIVER

By: _____ Date: _____

PRESERVATION PENNSYLVANIA

By: _____ Date: _____

DELAWARE NATION OF OKLAHOMA

By: _____ Date: _____

DELAWARE TRIBE OF OKLAHOMA

By: _____ Date: _____

SHOHOLA TOWNSHIP, PIKE COUNTY, PA

By: *Marion K. Wall* Date: *9/14/11*

TOWN OF LUMBERLAND, SULLIVAN COUNTY, NY

By: _____ Date: _____

NATIONAL TRUST FOR HISTORIC PRESERVATION

By: _____ Date: _____

PRESERVATION LEAGUE OF NEW YORK

By: _____ Date: _____

FRIENDS OF POND EDDY BRIDGE

By: _____ Date: _____

UPPER DELAWARE COUNCIL

By: *Randy D. Beckwith* Date: 10-6-11

HISTORIC BRIDGE FOUNDATION

By: _____ Date: _____

UPPER DELAWARE PRESERVATION COALITION

By: _____ Date: _____

CUMBERLAND COUNTY REDEVELOPMENT AUTHORITY

By: _____ Date: _____

Approved as to Legality and Form:

By: Michael D. Levine Date: 9/7/11 for Chief Counsel

By: [Signature] Date: 9/16/11 Deputy General Counsel

By: Amy McMillan Date: 9/28/11 Deputy Attorney General

RECEIVED
STATE OF MICHIGAN
OFFICE OF THE ATTORNEY GENERAL
LANSING, MICHIGAN