

MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER,
PURSUANT TO 36 CFR § 800.6(b)(2)
REGARDING THE HEADQUARTERS ROAD OVER TINICUM CREEK PROJECT, STATE
ROUTE 1012, SECTION BRC
TINICUM TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA

WHEREAS, the Federal Highway Administration (“FHWA”), proposes to replace the Headquarters Road Bridge over Tinicum Creek/ State Route (S.R.) 1012, Section BRC in Tinicum Township, Bucks County (hereafter referred to as “the Project”);

WHEREAS, the FHWA, pursuant to 36 CFR Part 800.4(c), has determined, in consultation with the Pennsylvania State Historic Preservation Officer (“SHPO”), that the Headquarters Road Bridge is eligible for inclusion in the National Register of Historic Places (“National Register”) as a contributing resource to the National Register listed Ridge Valley Rural Historic District;

WHEREAS, the FHWA has determined that the Project will have an adverse effect on the Ridge Valley Rural Historic District due to the demolition of the contributing bridge;

WHEREAS, the FHWA has consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. Part 470 (“NHPA”), and its implementing regulations (36 CFR § 800) to resolve the effects of the Project on historic properties;

WHEREAS, pursuant to 36 CFR 800.3, the FHWA has made an effort to seek consulting parties and the list of consulting parties can be found in Appendix A of this document;

WHEREAS, the FHWA will continue to involve the public and consulting parties as stipulated under the National Environmental Policy Act (NEPA) of 1969, as amended, and the NHPA and 36 CFR § 800, in a manner consistent with the Pennsylvania Department of Transportation’s (“PennDOT”) Public Involvement Procedures;

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (“ACHP”) of the adverse effect of the Project on historic properties and has invited the ACHP to participate in consultation and the ACHP accepted;

WHEREAS, the FHWA, the ACHP and the SHPO have invited PennDOT to participate in consultation and to sign this MOA, thus becoming a party to this MOA;

WHEREAS, the FHWA, the ACHP, the SHPO, and PennDOT are signatories to this MOA; and

WHEREAS, the FHWA and PennDOT recognize that, to the maximum extent possible, the new structure will be designed in accordance with the *Secretary of the Interior’s Standards* which indicate new construction should be compatible with the massing, size, scale, materials, texture and color of the historic resource.

NOW, THEREFORE, FHWA, the ACHP, and the SHPO agree that upon FHWA's decision to proceed with the Project, FHWA shall ensure that PennDOT implements the following stipulations in order to take into account the effects of the proposed action on historic properties.

I. Recitals

The recitals set forth above are incorporated by reference as a material part of the MOA.

II. Stipulations

1. PennDOT will form a Design Advisory Committee (DAC) for the project, consisting of no more than 9 members. The following five federal, state and local agencies will each be invited to provide one member: National Park Service, Bucks County Officials, Tincum Township Supervisors, the PA State Historic Preservation Office, and the Advisory Council on Historic Preservation. The remaining members will be drawn from the consulting parties of this Project and the local public.

- a) The DAC will be invited to review project plans and specifications and provide feedback on aesthetic elements. DAC review will occur at least three times during the project development process at roughly the 30%, 60% and 90% phases. The DAC will again be engaged during the early stages of construction to provide input on the masonry sample panel.
- b) PennDOT will incorporate the recommendations of the DAC, as practicable.

2. During construction, PennDOT will salvage stone from the existing structure's masonry components for use in the proposed 2 lane concrete structure. Using a stone mason with experience in similar projects, salvaged stone will be reused as a stone facing on concrete components of the new structure including the abutments, wingwalls and approach roadway barriers. The stone facing should closely match, to the extent possible, the orientation and layout of existing stone, taking special care to place larger cut stones at the base of the substructure and transitioning to smaller rubble course at the top.

- a) PennDOT will construct a masonry sample panel prior to the start of the application of any masonry facing to demonstrate the layout and orientation of the proposed stone work as well as mortar pointing.
- b) PennDOT will hold a field meeting with members of the Design Advisory Committee (DAC) to review the masonry sample panel and provide comment. The result of the field meeting together with the masonry sample panel will serve as a guide for all stone work which is to take place on the structure.

3. PennDOT will construct a bridge with the minimum allowable roadway width, in accordance with the applicable design standards, within the same approximate footprint as the existing bridge.

4. The new bridge will incorporate brown, painted, Type 10M railing.
5. The existing bridge plaque will be retained and incorporated into the new bridge.
6. Rock scour protection surrounding bridge abutments will be choked with top-soil and seeded with a riparian seed mix to minimize, to the extent possible, visible rock.

II. Administrative Stipulations

A. Personnel Qualifications

PennDOT will ensure that all historic preservation work carried out pursuant to this agreement will be by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualification Standards for Historic Preservation Professionals* (61 CFR Appendix A).

B. Late Discoveries

If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, PennDOT shall suspend work in the area of the discovery, and PennDOT shall immediately notify the FHWA. In compliance with 36 CFR §800.13, FHWA shall notify within 24 hours the ACHP, the SHPO, and, if applicable, federally recognized tribal organizations that attach religious and/or cultural significance to the affected property. The SHPO, the FHWA, PennDOT, 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 determine an appropriate treatment of the discovery prior to the resumption of construction activities in the area of the discovery.

PennDOT shall ensure that any human remains and/or grave-associated artifacts encountered during the archaeological investigations are brought to the immediate attention of the FHWA, the SHPO, PennDOT, and any federally recognized Tribes that may attach religious and/or cultural significance to the affected property. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until FHWA, in consultation with the appropriate parties, has developed a treatment plan that considers the comments of the appropriate parties. All procedures will follow the guidance outlined in the National Park Service publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, taking into account the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) and the Pennsylvania Historical and Museum Commission's *Policy for the Treatment of Burials and Human Remains (1993)*.

C. Amendments

Any party to this MOA may propose to FHWA that it be amended, whereupon FHWA shall consult with the other parties to this MOA to consider such an amendment. 36 CFR § 800.6(c)(7) shall govern the execution of any such amendment.

D. Resolving Objections

- a. Should any party to this MOA object in writing to FHWA regarding any action carried out or proposed with respect to the Project or implementation of this MOA, FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1) Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;
 - 2) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - 3) Notify FHWA that the objection will be referred to comment pursuant to 36 CFR § 800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by FHWA in accordance with 36 CFR § 800.7(c)(4) and § 110(1) of NHPA.
- b. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.
- c. FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's responsibility to carry out all actions under this MOA that are not the subjects of the objection shall remain unchanged.

E. Resolution of Objections by the Public

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

F. Review of Implementation

If the stipulations have not been initiated within five years after the FHWA's execution of this MOA, the parties to this MOA shall review the MOA to determine

whether revisions are needed. If revisions are needed, the parties to this MOA shall consult in accordance with 36 CFR Part 800 to make such revisions.

G. Sunsetting/Duration

If the terms of this MOA have not been implemented by seven (7) years from the date of the signed MOA by FHWA, this MOA shall be considered null and void. In such event, FHWA shall notify the parties to this MOA, and if it chooses to continue with the Project, shall re-initiate review of the Project in accordance with 36 CFR § 800.

H. Termination

- a. 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.
- b. 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 MOA, and the ACHP, that it 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 funding request, and the FHWA will assess its responsibilities and obligations pursuant to 36 CFR § 800 and determine steps to terminate the MOA.

I. Severability

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

J. Assignment

The responsibilities included in this MOA may not be assigned by any party to this MOA either in whole or in part, without the written consent of the Signatories.

K. Notices

- a. The contact person for each of the signatories of the MOA shall be the following:
 - 1) For FHWA: Director of Program Development, 228 Walnut Street, 5th Floor, Harrisburg, PA 17101, Telephone Number: (717) 221-4545.

- 2) For PennDOT: Director, Bureau of Project Delivery, 400 North Street, 7th Floor, Harrisburg, PA 17120, Telephone Number: (717) 787-3310.
- 3) For SHPO: Deputy SHPO, 400 North Street, 2nd Floor, Harrisburg, PA 17120, Telephone Number: (717) 787-4215.
- 4) For ACHP: Director, Office of Federal Agency Programs, 401 F Street NW, Suite 308, Washington DC 20001-2637, Telephone Number: (202) 517-0200.

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

IV. Counterparts

This MOA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

Execution of this MOA by the FHWA, the ACHP and the SHPO, and implementation of its terms, is evidence that the FHWA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____

Approved as to Legality and Form

By: _____ Date: _____

for PennDOT Chief Counsel

By: _____ Date: _____

for PHMC Counsel

By: _____ Date: _____

Deputy General Counsel

By: _____ Date: _____

Deputy Attorney General

Appendix A

Consulting Party List as of May 2017

OrganizationName	Primary First Name	Primary Last Name	Title	c/o	City	State
National Park Service	Jamie	Foxburgh			Boston	MA
Advisory Council on Historic Preservation	Maryann	Naber	Sr. Program Analyst/FHWA Liaison		Washington	DC
US Senator Robert Casey, Jr.	Robert	Casey	Senator	Lara Flynn, Regional Representative	Philadelphia	PA
US House of Representatives- 8th Congressional District of PA	Brian	Fitzpatrick	Representative	Angela Hibbert, District Director	Langhorne	PA
US Army Corps of Engineers, Philadelphia District	Nicole	Minnichbach			Philadelphia	PA
US Army Corps of Engineers, Philadelphia District	Todd	Schalbe			Philadelphia	PA
PA Department of Environmental Protection- Southeast Region	Christian	Viot	Water Pollution Biologist, Waterways and Wetlands		Norristown	PA
PA State Senate-10th District	Charles	McIlhiney Jr.	Senator	Tammi Mancuso, Administrative Assistant	Doylestown	PA
PA State Senate- 24th District	Bob	Mensch	Senator	Lisa Walter, Chief of Staff	Pennsburg	PA
PA House of Representatives- 143rd District Pennsylvania Historical and Museum Commission	Marguerite	Quinn	Representative	Diane Smith	Doylestown	PA
Tinicum Township	Barbara	Frederick	Historic Preservation Supervisor		Harrisburg	PA
Tinicum Township Board of Supervisors	Teri	Lewis	Township Manager		Pipersville	PA
Tinicum Township Board of Supervisors	John	Blanchard	Township Supervisor		Pipersville	PA
Tinicum Township Board of Supervisors	Vincent	Dotti	Township Supervisor		Pipersville	PA
Tinicum Township Board of Supervisors	Rich	Rosamilla	Township Supervisor		Pipersville	PA
Tinicum Township Historical Commission	Janine	Black	Chairperson		Pipersville	PA
Tinicum Township EAC	Robert	Stanfield	Chair		Pipersville	PA
Tinicum Creek Watershed Association	Michael A.	Smith	President		Ottsville	PA
Tinicum Creek Watershed Association	Damon	Aherne			Upper Black Eddy	PA
Delaware Riverkeeper Network	Maya K.	van Rosum	Delaware Riverkeeper		Bristol	PA
Tinicum Conservancy	Jeff	Keller	Trustee		Upper Black Eddy	PA
Historic Bridge Foundation	Kitty	Henderson	Executive Director		Austin	TX
	Evelyn	Aherne			Erwinna	PA
	James	Ambrogio			Erwinna	PA
	Kathryn Ann	Auerbach			Upper Black Eddy	PA
	Samantha Beattie and Stephen Smith				Erwinna	PA
	Jerome & Kristine	Becker			Erwinna	PA
	Charles	Boone			Ottsville	PA
	Boyce	Budd			Erwinna	PA
	Timothy	Cashman			Ottsville	PA
	Louis and Janet	Cicalese			Ottsville	PA
	Robert & Judith	Esch			Ottsville	PA
	Daniel and April	Green			Ottsville	PA
	Chris	Hackley			Ottsville	PA
	Marilyn	Herd			Ottsville	PA
	Kevin	Joy			Solebury	PA
	Holly	Krupp Kelly			Ottsville	PA
	Marion and Neil	Kyde			Ottsville	PA
	Richard & Stana	Lennox			Erwinna	PA
	Norman	MacArthur			Erwinna	PA
	F.A.	Morgan			Erwinna	PA
	Brian	Murphy			Ottsville	PA
	Graham	Place			Erwinna	PA
	Mary & Amieto	Pucci			Erwinna	PA
	Joan	Ramage-Macdonald			Erwinna	PA
	Charles	Reichner			Revere	PA
	David	Rothschild			Ottsville	PA
	Vladimir & Jesse	Salamun			Erwinna	PA
	John	Salerno			Ottsville	PA
	Bruce	Wallace			Ottsville	PA
	Paul	Wieand			Ottsville	PA
	June	Rothkopf			Ottsville	PA