

Amendments to Statewide Section 106 Programmatic Agreement Nearing Completion

July 11, 2017

In March of 2010, the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP), the Pennsylvania State Historic Preservation Officer (SHPO), and the Pennsylvania Department of Transportation (PennDOT) executed a statewide Section 106 Programmatic Agreement (PA) for the Federal Aid Highway Program in Pennsylvania. Consulting parties included: the Seneca Nation of Indians, the Tonawanda Seneca Nation, the Society for Pennsylvania Archaeology, the Pennsylvania Archaeology Council, and Preservation Pennsylvania.

With several years of experience and after careful consideration, the signatories to the PA propose an Amendment to the Programmatic Agreement. The intent of the Amendment is to provide clarification on certain stipulations, delete certain stipulations or portions of stipulations, to reflect changes in the program, and to add stipulations. The proposed changes do not substantially alter the process for implementing the PA.

In 2015, the following changes were proposed and circulated to the consulting parties:

- Modification to Stipulation H to add a reference to the ACHP's Program Comment for Post-1945 Concrete and Steel Bridges, and to add a commitment for PennDOT to consult with the SHPO every 10 years to review the population of historic bridges, and reevaluate the remaining bridges, as necessary.
- Addition of a stipulation (III.B.6.d) to prepare a project specific programmatic agreement when conditions for use of the Deferral of Archaeological Testing form do not apply.
- Changes to two stipulations (III.b.9.b and XI.A) to clarify when FHWA should be notified for certain No Adverse Effect findings, and the role of FHWA in dispute resolution.
- Amendment of Stipulation X.D to change the annual report due date to 30 days after the start of the calendar year.
- The duration of the PA has been revised to be from 10 years from date of execution of the original PA (2020) to 10 years from the date of execution of the Amended PA (estimated 2027).
- A change to Appendix C, Exemption 2.b.i.e for bridge replacement projects, that removes the use of geotextile and fill in temporary construction areas from the exemption.

Through additional consultation with the signatories and guidance by PennDOT's Office of Chief Counsel and Pennsylvania's Office of General Counsel, additional changes have been proposed:

- Format revisions suggested by the ACHP were incorporated.
- Stipulation X.D extends the time to complete the annual report from 30 to 60 days from the beginning of the calendar year.
- A revision to Stipulation II.F requested by the SHPO regarding the Historic Bridge Inventory and Evaluation. They requested a change to the bridge survey methodology for National Register eligibility. Results of a reevaluation of metal truss bridges will be

finalized within 6 months of the execution of the Amended PA. The stipulation also commits PennDOT & SHPO to review other bridge types within 4 years of signing the Amended PA to determine losses and whether a reevaluation is needed. Every 10 years PennDOT and the SHPO will develop a plan to review the population of bridges.

- An addition was made in Appendix C to one of the main conditions that would allow a project to be exempt. The project cannot require more than 12 ft of new right-of-way (existing condition) or permanent easement (new condition).
- Stipulation IX has been revised and an Appendix F has been added, which replaces the expired Emergency Relief PA.
- Office of Chief Counsel and Office of General Counsel requested editorial changes including inconsistencies in terminology, use of the term “Amended PA”, rather than “PA, as amended” throughout the document, addition of Stipulation XV. Notices, which asks for contact information for each of the signatories.

The [Amended PA](#) is being provided to all consulting parties, along with a [mark-up copy](#) showing all changes from the Executed 2010 PA. We anticipate executing the Amended PA over the next few months. If you have any questions or comments, please provide them to either Deborah Suci Smith at the FHWA Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101-1720 or by e-mail to deborah.suci.smith@dot.gov, or to Ira Beckerman at PennDOT, Bureau of Project Delivery, P.O. Box 3790, Harrisburg, PA 17120-3790 or by e-mail to ibeckerman@pa.gov.