Dear Ms. Suciu Smith:

In accordance with Stipulation XV of the Statewide Programmatic Agreement for Section 106 Consultation Regarding the Emergency Relief Program (PA), the Advisory Council on Historic Preservation agrees with extending the PA for an additional two years.

Sincerely,

Susan Glimcher
Acting Executive Director
Advisory Council on Historic Preservation

www.achp.gov
Follow us on Twitter @USACHP and on Facebook at Preservation-The Next Generation

Najah Duvall-Gabriel
Historic Preservation Specialist
Advisory Council on Historic Preservation
401 F Street NW
Suite 308
Washington, DC 20001-2637
(202) 517-0210
To: Najah Duvall-Gabriel  
Cc: Reid Nelson; MaryAnn.Naber@dot.gov; Keith Lynch  
Subject: FW: Renewal of Emergency PA???

Good morning Najah

Congratulations on inheriting Pennsylvania as one of your review states! As I noted in the voice mail left this morning, we recently realized that our Statewide Programmatic Agreement for Section 106 Consultation Regarding the Emergency Relief Program will expire shortly. As you can see, Stipulation XV. Review and Duration C. states This Agreement will automatically expire on December 31, 2014, unless prior to this date, the FHWA, PennDOT, SHPO and Council agree in writing to extend it for an additional term.

We have received an agreement from the SHPO to extend the existing PA. At this time we would like to request your agreement to extend this agreement. We recognize that there is a nationwide effort and review of a Draft Environmental and Historic Preservation Guidance for Federal Disaster Recovery Assistance Applicants. We expect that with a temporary extension of the existing PA, we can review the resultant final Guidance and make any appropriate changes to a full revision as necessary. At this time we are asking for agreement on a 3 year extension.

Please call or email if you have any questions or concerns

Thank you for your consideration

Deborah

Deborah Suciu Smith  
FEDERAL HIGHWAY ADMINISTRATION//USDOT  
PENNSYLVANIA DIVISION OFFICE//PROJECT DEVELOPMENT TEAM  
-AND-  
RESOURCE CENTER//ENVIRONMENT & REALTY TEAM  
717.221.3785 (d)//443.462.1228 (c)// deborah.suciu.smith@dot.gov

From: Beckerman, Ira [mailto:IBECKERMAN@pa.gov]  
Sent: Monday, December 22, 2014 11:39 AM  
To: Lynch, Keith (FHWA); Suciu.Smith, Deborah (FHWA); Lombard, Mark; Bellew, Serena  
Subject: Renewal of Emergency PA???

Did anyone get the e-mail below? What do we want to do?

Ira Beckerman, Ph.D., RPA | Cultural Resources Unit Chief  
PA Department of Transportation | Bureau of Project Delivery  
Highway Delivery Division  
Environmental Policy and Development Section  
400 North Street, 7th Floor | Harrisburg, PA 17120  
Phone: 717.772.0830 | FAX: 717.772.0834  
www.dot.state.pa.us
Our current Emergency PA is due to expire December 31, 2014. In light of the recent proposed guidance that is open for public comment, I am suggesting we renew unchanged the current agreement for 2 years, to give the ACHP time to finalize their guidance prior to our utilizing it in any amendments to the PA that would be warranted.

Ira Beckerman, Ph.D., RPA | Cultural Resources Unit Chief
PA Department of Transportation | Bureau of Project Delivery
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www.dot.state.pa.us

State DOTs, in particular, may be interested in reviewing this guidance jointly developed by the DHS, FEMA, and CEQ. Comments will be accepted until November 28.

MaryAnn Naber
ENVIRONMENTAL PROTECTION/HISTORIC PRESERVATION
PROJECT DEVELOPMENT & ENVIRONMENTAL REVIEW | FHWA | USDOT
1200 NEW JERSEY AVE S.E., E76-311, WASHINGTON, DC 20590
P: 202-366-2060 | F: 202.366.7660 | E: MARYANN.NABER@DOT.GOV
The ACHP in coordination with the inter-agency Steering Group comprised of the Department of Homeland Security, the Federal Emergency Management Agency, and the Council on Environmental Quality announces the public review period for the Draft Environmental and Historic Preservation Guidance for Federal Disaster Recovery Assistance Applicants. The Draft Applicant Guidance is an important step in the implementation of the Unified Federal Environmental and Historic Preservation Review Process (Unified Federal Review). The Unified Federal Review was legislatively mandated in the Sandy Recovery Improvement Act, which amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act and authorizes several significant changes to the way agencies may deliver federal disaster assistance and establishes efficiencies that will expedite the recovery process and reduce cost. For additional information on the Unified Federal Review, please go here http://www.fema.gov/environmental-historic-preservation/unified-federal-environmental-and-historic-preservation-review.

The Draft Applicant Guidance will assist Applicants in navigating through environmental and historic preservation (EHP) compliance requirements when multiple agencies may be involved in funding or permitting a disaster recovery project. The guidance provides an overview of the review process for applying for federal assistance and permits. It also outlines types of information Applicants should submit to federal agencies to assist in expediting the EHP review.

The development of the Draft Applicant Guidance has been led by the Unified Federal Review Steering Group in coordination with its federal interagency working group. The input provided during the public review will inform the further development of the guidance.

To access the Draft Applicant Guidance and for further instructions on submitting comments, please visit the Unified Federal Review webpage http://www.fema.gov/environmental-historic-preservation/environmental-and-historic-preservation-guidance-federal.

Comments on the Draft Applicant Guidance will be accepted thru November 28th.

Reid J. Nelson
Director
Office of Federal Agency Programs
January 13, 2005

James A. Cheatham
Division Administrator
Federal Highway Administration
Pennsylvania Division
228 Walnut Street, Room 508
Harrisburg, PA 17101-1720

RE:  Programmatic Agreement for Section 106 Consultation Regarding the Emergency Relief Program.

Dear Mr. Cheatham:

On January 7, 2005, we received your letter transmitting the signed Programmatic Agreement regarding implementation of the Federal Aid Emergency Relief Program in the Commonwealth of Pennsylvania. We are pleased to inform you that the ACHP has executed the Agreement. We are retaining a copy for our files and returning the original Agreement to FHWA.

Execution and implementation of this Agreement evidences FHWA’s compliance with Section 106 for undertakings carried out under this program. Please provide copies of the signed Agreement to the other parties and your Federal Preservation Officer (FPO), and follow up by providing all parties with copies of any additional signatures you receive. If you have any questions or require the further assistance of the ACHP, please feel free to contact me at 202-606-8522 or clegard@achp.gov.

Sincerely,

Carol Legard
FHWA Liaison
AGREEMENT ROUTING SLIP

Staff Member: Carol Legard  Date: 1-12-2005  MOA or PA? PA

Case: PA/Statewide Emergency Undertakings/FHWA/PA

Date of notification to Agency that ACHP will participate: NA

Review and Approval:

Director, OFAP  Date: 1/3/05  Executive Director  Date: 1/9/05

ACHP Signatory Requested: Executive Director _X__  Chairman ___

Criteria for ACHP involvement: (check all that apply)

Substantial impacts ____  Policy/interpretation _X__  Procedural Problems ____  Tribal concerns ___

Good candidate for a press story? ____  Case Digest? ___

Brief summary of case:
Extensive flooding during 2004 in the Commonwealth of Pennsylvania has caused FHWA and the Pennsylvania Department of Transportation (PennDOT) to become overwhelmed with Section 106 reviews for many emergency projects carried out under the Federal Aid Emergency Relief Program. These funds are used to complete many emergency activities that occur more than 30 days after the emergency is declared. The PA was developed to streamline Section 106 consultation on all activities carried out under the Emergency Relief Program, while ensuring that appropriate identification and avoidance of effects to historic properties is done on those actions with the potential to affect historic properties. The PA has a term of 10 years and may be used for any actions carried out under the program during that term.

Who participated in consultation?
FHWA, PennDOT, ACHP, Seneca-Cayuga Tribe of Oklahoma, Shawnee Tribe, Delaware Tribe of Indians of Oklahoma, Delaware Nation of Oklahoma.

Why was ACHP involvement needed for this case?
The PA may be useful as a model or prototype for statewide agreements with FHWA re: emergency relief programs.

Why is this a good agreement?

Distribution: (check all that apply)

OCEO ____  NAP ____  OPI ____  OGC ____  Selected ACHP members__________________
The agreement provides streamlining, but not a waiver of S.106 review for many emergency undertakings related to the 2004 floods that would otherwise overwhelm PennDOT and the SHPO staff.

**Any important policy or legal issues?**

Good coordination with tribes. All potentially affected Indian tribes were consulted in the development of the PA and invited to be signatories. Two tribes have signed and FHWA expects the other two to sign onto the PA in the near

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*Distribution: (check all that apply)*

- OCEO ✔
- NAP ✔
- OPI
- OGC
- Selected ACHP members
WHEREAS the Commonwealth of Pennsylvania may experience an event triggering a state of emergency, as declared by the President of the United States and/or the Governor of Pennsylvania; and,

WHEREAS the Federal Highway Administration (FHWA) has made funds available through FHWA's Emergency Relief Program under Section 125 of Title 23, U.S.C., for the repair of damage to bridges, streets, roads, or highways on the Federal-aid system, and other Federal-aid highways; and,

WHEREAS the regulations for the Emergency Relief Program allows for emergency repairs (23 CFR § 668.103), defined as those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of: minimizing the extent of the damage; protecting remaining facilities; or, restoring essential traffic; as well as permanent repairs or restoration done as part of the emergency repairs, approved by FHWA (23 CFR § 668.109), hereby collectively referred to as Emergency Activities; and,

WHEREAS Emergency Activities meet the criteria for a categorical exclusion (CE) as defined in the Council of Environmental Quality regulation 40 CFR § 1508.4, and, do not normally require any further approvals by the Administration [23 CFR § 771.117(c)(9)] under the National Environmental Policy Act (NEPA) (Sections 4321-4347 of Title 42, U.S.C.), and,

WHEREAS FHWA has determined that Emergency Activities may have effects on historic properties as defined in 36 CFR § 800.16; and,

WHEREAS FHWA conducts Emergency Activities that, while they are undertakings as defined in 36 CFR § 800.16, are so unlikely to affect historic properties that, in the view of FHWA and the Pennsylvania State Historic Preservation Officer (SHPO), it is unnecessary for FHWA to identify historic properties in the vicinity of some such undertakings, because no such properties shall be affected; and,

WHEREAS necessary and timely completion of Emergency Activities do not permit FHWA to carry out the Section 106 review process in the time frames set forth in 36 CFR § 800.4 through 800.6, FHWA has elected to comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f); hereinafter Section 106) through execution and implementation of a Programmatic Agreement (PA) pursuant to 36 CFR § 800.14(b); and,
WHEREAS the signatories to this PA desire to expedite the Section 106 review for Emergency Activities; and,

WHEREAS FHWA has consulted with the Advisory Council on Historic Preservation (ACHP) and the SHPO in accordance with 36 CFR § 800.12(a) and 36 CFR § 800.14(b) to develop this PA; and,

WHEREAS, the FHWA and the SHPO have invited the Pennsylvania Department of Transportation (PennDOT) and federally recognized Tribes (Tribes) that may attach religious and/or cultural significance to any affected property within the APE of any specific Emergency Activity pursuant to 36 CFR § 800.3(f)(2), namely, the Absentee-Shawnee Tribe of Oklahoma, the Cayuga Nation, the Delaware Nation of Oklahoma, the Delaware Tribe of Indians of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Oneida Indian Nation, the Oneida Nation of Wisconsin, the Onondaga Nation, the Seneca Nation of Indians, Seneca-Cayuga Tribe of Oklahoma, the Shawnee Tribe, the St. Regis Mohawk Tribe, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Seneca Nation, and the Tuscarora Nation to participate in the consultation and concur in this PA; and,

WHEREAS, the benefits of seeking comment from the public and interested parties need to be balanced with the health and public safety of the public;

NOW, THEREFORE, FHWA, the SHPO, and the ACHP agree that upon the decision of the FHWA to proceed with an Emergency Activity, the FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking(s) on historic properties.

STIPULATIONS

The FHWA shall ensure that the following measures are carried out:

I. Applicability

This PA may be activated by the FHWA consistent with 23 CFR § 668 upon the declaration of a state of emergency by the President of the United States and/or the Governor of the Commonwealth of Pennsylvania. Emergency Activities under the stated declaration may follow the process in this PA for complying with 36 CFR Part 800.

II. Eligible Emergency Activities are listed in Appendix A. All eligible emergency activities are reviewed and approved by FHWA. Construction for the eligible Emergency Activity normally will be completed within 180 days of the occurrence of the emergency event. The procedures in this Agreement apply only those emergency activities for which construction is completed within 180 days of the emergency event unless the FHWA finds there to be an
extenuating circumstance to construction completion that would warrant a minor time deviation.

III. Maintenance of CR Professional Staff

PennDOT shall maintain staff – either permanent employees or consultants (referred to in this PA as “CR Professionals”) - who meet the National Park Service’s Professional Qualifications Standards (36 CFR § 61- Appendix B) in archaeology, history, or architectural history whose duties shall include implementing this PA, and who have received training under the current Minor Projects Programmatic Agreement (executed December, 1996).

III. Exempt Activities

A. Immediate rescue and salvage operations conducted to preserve life and property are exempt from the provisions of Section 106 [36 CFR § 800.12(d)]. If possible, where there are immediate threats to life or property, the CR Professionals will visit the project site and issue an immediate finding of effect. Where measures are needed to avoid adverse effects, or to minimize or mitigate adverse effects, the CR Professionals shall work closely with the work crews to ensure all reasonable measures are implemented. Documentation of the finding shall be provided to FHWA and the SHPO no later than 45 days after the field view.

B. Additionally, the following shall be considered exempt from further consideration under Section 106 or under this PA. PennDOT need not identify historic properties in the vicinity of Emergency Activities that fall into any of the classes listed below, provided that the Activities are limited to the activities specified, are not part of larger undertakings, will not cause any new ground disturbance or extend outside of the existing right-of-way, and are not located within a known historic district, an individually listed property, a known archaeological site, or a National Historic Landmark. Within known historic properties, PennDOT need not consider the effects of Emergency Activities that fall into any of the classes listed below, provided that the Activities are limited to the activities specified, are not part of larger undertakings, and repairs are made in-kind:

1. Repair of road to pre-disaster conditions: number of lanes; shoulders; medians; curvature; grades; clearances; and side slopes; and no substantial changes in elevation or road width.

2. Repair or replacement of traffic control devices such as traffic signs, delineators, pavement markings, ramp and traffic surveillance control systems, and traffic signals.

3. Repair or replacement of road lighting.
4. Repair or replacement of other road appurtenances, such as curbs, berms, sidewalks and fences.

5. Repair or replacement of roadway safety elements, such as barriers, guardrails, and impact-attenuation devices.

6. Repair or replacement of culvert systems (structures less than or equal to 8 feet in span length), to include headwalls and wingwalls, without altering the pre-disaster disturbed earth cross-section.

7. Placement of fill at bridge piers, wingwalls, and abutments to repair scour.

8. Repair or replacement of retaining walls.

9. Channel cleaning.

10. All other activities necessary to quickly restore and maintain essential traffic and minimize the extent of damage and protect remaining facilities [i.e. temporary roads, bridges, barriers, Maintenance and Protection of Traffic (MPT) devices].

IV. Review of Non-Exempt Activities

PennDOT shall carry out the following procedures for emergency activities not identified as exempt in Stipulation III. The following measures apply to all non-exempt emergency activities carried out under this Agreement, whether completed within the first 30 days after the emergency event or within 180 days of the event:

A. Identification and Evaluation of Historic Properties

1. The PennDOT's Cultural Resource (CR) Professional team (the archaeologist and architectural historian covering the District in which the Activity is to occur) shall field view the Activity with the goal of quickly determining which Activities may have an adverse effect on historic properties.

2. PennDOT's CR Professionals shall identify and evaluate historic properties within the area of potential effect of individual undertakings conducted under this program, as per 36 CFR § 800.4 and in a manner consistent with the Secretary of Interior's Standards and Guidelines for Identification. National Register eligibility for state- and locally-owned bridges will be determined by the results of the current (1996) Historic Bridge Survey or any subsequent modifications or updates to that survey developed by the FHWA in consultation with PennDOT and SHPO. PennDOT shall review
inventory information provided in the Cultural Resources GIS, and shall consult on eligibility with Tribes that may attach traditional religious and cultural significance to historic properties (hereafter, appropriate Tribes).

3. The area of potential effect on above ground historic properties for all Emergency Activities is limited to within 100 feet of the project boundary. PennDOT’s CR Professionals shall evaluate any above ground properties 50 years old or older present within 100 feet of a proposed bridge removal, repair, or replacement for eligibility, as per 36 CFR § 800.4 if an Activity has the potential to introduce effects not previously in place.

If the area to be impacted by an Emergency Activity has been previously disturbed, based on a field examination by PennDOT’s CR Professionals supported by any appropriate information, no further evaluation to determine presence of National Register-eligible archaeological historic properties (hereinafter archaeological resources) shall be required. If the area to be impacted has not been previously disturbed, PennDOT’s CR Professionals shall either:

a. Assess the need for further archaeological investigation. In areas subject to potential effect to known significant archaeological resources or in areas where there is a high potential for significant archaeological resources that may be impacted by a Emergency Relief project, PennDOT shall conduct an archaeological study to identify archaeological resources in a manner consistent with the Secretary's Standards, and the Pennsylvania Guidelines for Archaeological Investigations (July, 1991). PennDOT shall prepare and transmit the results of any work consistent with Stipulation VII below and provide it to the SHPO and other consulting parties as part of the effect documentation in Stipulation IV.B below.

or,

b. For temporary construction activities, PennDOT may place geotextile and 18 inches of clean fill over the area to be impacted. No further archaeological study shall be necessary to identify archaeological resources in this area, because no such resources are likely to be affected.

B. Assessment of Effect

1. For each Emergency Activity where historic properties have been identified in the area of potential effect, PennDOT’s CR Professionals shall assess the effects of the Activity on these properties consistent with 36CFR § 800.4 and 800.5.

Emergency Relief Projects Programmatic Agreement – December 2004- Pg 5
2. PennDOT’s CR Professional assessment of effects from Emergency Activities on Historic Properties per 36 CFR § 800.16(l) shall be made in good faith, based on knowledge available to the CR Professional at the time of the field assessment, consideration of NR listed Historic Districts and listed properties, and known archaeological sites, as available in the Cultural Resources Geographic Information System, and best professional judgment.

3. Special provisions for Bridges

   a. Any bridge rehabilitation of a non-historic bridge that does not involve a change of elevation or width or removal of decorative features shall be considered to have no effect on historic resources within the APE.

   b. When replacement of a non-historic bridge in the area of potential effect of an historic district is considered not to be an adverse effect, design plans shall be submitted to the SHPO for comment.

   c. Rehabilitations of historic bridges that are compatible with the historic and architectural qualities of the bridge in terms of scale, massing, color, and materials, and are responsive to the recommended approaches to rehabilitation or new construction set forth in the Secretary's Standards for Rehabilitation shall be considered No Adverse Effect.

   d. Rehabilitation of historic bridges that does not meet Secretary's Standards for Rehabilitation shall be considered an adverse effect. Removal and replacement of an extant historic bridge shall be considered an adverse effect. Removal and/or replacement of an historic bridge destroyed or significantly damaged during the event shall be considered a no effect or a no adverse effect.

C. Resolution of Adverse Effects

1. PennDOT, on behalf of FHWA, shall seek ways to avoid or reduce Adverse Effects to historic properties. The manner in which consultation is carried out to resolve effects will depend on whether the undertaking must be implemented within 30 days of the emergency event (see Stipulation V), or after 30 days but before 180 days of the emergency event (see Stipulation VI).

2. If National Register eligible archaeology sites are identified in the project area, PennDOT shall consider each of the following options:

   a. avoidance - PennDOT shall notify the SHPO and appropriate Tribe(s)
(when appropriate, per Sub-heading A above) and proceed with the Emergency Activity without further review by the ACHP;

b. protection of the site by placing fill over geotextile - PennDOT shall consult with the SHPO and appropriate Tribe(s) (when appropriate), and, with concurrence or no objections within the comment period, proceed with the Emergency Activity without further review;

c. site excavation or implementation of an alternative mitigation. If FHWA in consultation with the SHPO and appropriate Tribe(s) (when appropriate) agrees that a data recovery or alternative mitigation is appropriate, PennDOT shall develop a mitigation implementation plan. PennDOT shall submit the mitigation plan to the SHPO, FHWA, and appropriate Tribe(s) (when appropriate), and, with concurrence or no objections within the comment period, proceed with implementation of the plan.

3. FHWA shall ensure that when historic bridges may be adversely affected and the mitigation includes state level recordation, the bridges are recorded following the methodology set forth in Appendix D. Where practical, salvage of significant bridge elements should be considered, and where an interest is demonstrated, salvage undertaken and provided to the Commonwealth or interested local repository identified in consultation with the SHPO.

V. Expedited Consultation on Emergency Activities implemented within 30 days.

A. This section applies only to actions that will be implemented within 30 days after the occurrence of a disaster or emergency event. If the expedited review procedures apply, PennDOT may proceed with the emergency action after completing the following review:

1. PennDOT will provide the SHPO, FHWA and appropriate Tribes with available information about the condition and eligibility of the property, the proposed action, and prudent and feasible measures that would take the effect into account, requesting comments within 7 days. PennDOT may provide this information in writing, or through telephone conversations, electronic media, or meetings, at its discretion. The SHPO, FHWA, and appropriate Tribes may provide comments to PennDOT within 7 days of receipt of the information, unless PennDOT determines the nature of the emergency action warrants a shorter time period. Any comments received will be taken into account by PennDOT in finalizing any treatment of historic properties.

2. Should the SHPO and other parties not comment within 7 days, PennDOT
may proceed with the action based on available information.

3. If the SHPO, FHWA, or a consulting tribe object to PennDOT’s proposal to conduct an expedited review, to the documentation provided, or to proposed treatment measures, PennDOT will consult with the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA will request ACHP’s advice in accordance with 36 CFR § 800.2(b)(2). ACHP will advise FHWA within 7 days of receipt of the request, unless FHWA determines the nature of the emergency action warrants a shorter time period.

B. For all other activities, PennDOT will conduct Section 106 review pursuant to Stipulation VI. or VII.

C. FHWA may extend the period to which this Stipulation applies for an additional 30 days by notifying the ACHP, the SHPO, appropriate Tribe(s), and PennDOT, providing a justification for the extension.

VI. Standard Review Process for Emergency Actions undertaken within 180 Days.

During the period that begins 30 days (or 60 days per Stipulation V.C. above) after the occurrence of the emergency event and normally ending no later than 180 days after the occurrence of the emergency event, consultation shall be expedited according to this section. PennDOT’s CR Professionals are strongly encouraged to consult with all appropriate parties in an informal but expedited manner, utilizing telephone, FAX, and e-mail, in particular on Emergency Activities that may have adverse effects and where there are likely to be differences of opinion in the Activity’s effect on historic properties.

A. PennDOT shall submit documentation of the CR Professionals’ finding of effect to the SHPO, FHWA, and appropriate Tribes for comment, using the documentation forms provided in Appendix C. Each project submittal shall also provide a project location map and at least one image of the project area (digital photograph is OK).

B. The SHPO, FHWA, and appropriate Tribes shall have 15 days from receipt of adequate documentation in which to object to a finding of no historic properties affected or no adverse effect. If no party objects to an adequately documented finding of no historic properties affected or no adverse effect, PennDOT may proceed with the emergency action.

C. If PennDOT or FHWA determines that the proposed action may have an adverse effect on historic properties, PennDOT will propose actions to avoid or minimize the adverse effects. PennDOT will document the resolution of Adverse Effects in a Commitment Letter in lieu of an individual Memorandum of Agreement, and provide it concurrently to the SHPO, FHWA, and each
appropriate Tribe. The Commitment Letter shall also be made available to the public at that time, soliciting comments. If the SHPO, FHWA, and the appropriate Tribe(s) provide concurrence to PennDOT prior to 15 days, or, if no objection is received within 15 days of receipt of the Commitment Letter, FHWA may direct PennDOT to proceed with the Commitments. FHWA shall send a copy to the ACHP. PennDOT shall notify the public prior to construction.

D. For resolution of adverse effects to archaeological historic properties, archaeological data recovery may be a solution. Upon completion of fieldwork for archaeological data recovery excavations, PennDOT will provide an opportunity to meet on-site within 2 working days with the SHPO, FHWA, and appropriate Tribe(s) to consider whether additional fieldwork is necessary, or whether PennDOT may proceed with the Emergency Activity. FHWA shall ensure that a management summary is provided to the consulting parties and that notes documenting any field discussions are submitted to the parties prior to FHWA's determination that the archaeological fieldwork has been completed. FHWA shall ensure that a report of investigations consistent with the Pennsylvania Bureau for Historic Preservation's (1991) Guidelines for Archaeological Investigations shall be submitted to the SHPO for review and concurrence within 1 year of the completion of fieldwork.

VII. Archaeological Documentation

A. For all archaeological investigations conducted for the purposes of identifying and evaluating historic resources, archaeological documentation shall consist of an abbreviated report format (1991 Guidelines) that provides a project description, field methodology, field results, analysis and interpretation, a 7.5 Minute USGS Topographic map showing the project location, a large-scale map (1"=200' or larger) showing testing units, profile maps as appropriate, artifact catalogs as appropriate, and geomorphological report as appropriate. Digital photography is acceptable for the abbreviated report. A copy of the report shall be included with the CR Professional's finding of effect form (Appendix C). By prior consultation with the SHPO and any consulting Tribe, alternative documentation may be submitted.

B. Four copies of the archaeological report (other than a report of Data Recovery Excavations) and BHP Report Summary Form will be submitted to the SHPO for file within 180 days of the date of the CR Professional's finding of effect for the project. One copy of the archaeological report will be submitted to each consulting Tribe, as appropriate.
ADMINISTRATIVE CONDITIONS AND STIPULATIONS

VIII. Definition of Parties

For the purposes of this PA the term "parties to this PA" means any signatory or concurring party to this programmatic agreement.

IX. Consultation with Indian Tribes

On behalf of the FHWA, PennDOT will solicit comments from appropriate Tribes for emergency actions that may affect properties of traditional religious and cultural significance to a Tribe. The FHWA shall retain the ultimate responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Tribes. Notwithstanding any other provision of this agreement, FHWA shall honor the request of any Tribe for direct government-to-government consultation regarding an undertaking covered by this PA.

X. Professional Expertise:

FHWA shall ensure that all historic structure and bridge surveys carried out pursuant to this PA are completed by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Architectural History (Appendix B), and that all archaeological studies carried out pursuant to this PA are conducted by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Archeology (Appendix B).

XI. Late Discovery

If previously unidentified archaeological or historic properties are discovered after PennDOT has completed its Section 106 review through the process outlined in this PA, activities that would disturb the property(ies) in that portion of the project shall stop immediately. PennDOT shall immediately contact the FHWA, the SHPO, and each appropriate Tribe. Prior to further construction or activities in immediate vicinity of the historic property(ies), PennDOT shall coordinate following Stipulation VI, as appropriate.

XII. Treatment of Human Remains

PennDOT shall ensure that any human remains and grave-associated artifacts encountered during archaeological investigations are brought to the attention of the FHWA, SHPO, and any Tribe(s) that may attach religious and/or cultural significance to the affected property within 24 hours of discovery. No activities that might disturb or damage the remains shall be conducted until the FHWA, upon
consultation with all parties, determines whether excavation is necessary and/or desirable. For Native American human remains discovered on Federal lands, the Federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). For all other lands, PennDOT and FHWA will consult with any consulting Tribe(s), and consider the PHMC's Policy for the Treatment of Burials and Human Remains (1993); and, other state laws and regulations regarding human remains.

XIII. Curation of Archaeological Materials

A. FHWA shall ensure that artifacts recovered from archaeological investigations conducted under this PA and under the Commonwealth’s jurisdiction shall be curated consistent with the methodology in the Pennsylvania State Guidelines. When artifacts are recovered from private property, PennDOT shall request a deed of gift from the property owner. The FHWA shall determine the disposition of all publicly held collections and associated materials, in consultation with the SHPO and each appropriate Tribe, and with consideration of the State History Code (37 Pa.C.S. § 101).

B. PennDOT shall reimburse institutions curating these collections for their costs.

XIV. Dispute Resolution:

For emergency actions reviewed under Stipulation VI of this agreement:

A. Should the SHPO, FHWA, ACHP, or any other consulting party (including consulting parties participating in the review of specific Undertakings subject to this Agreement) object in writing within time frames established by this Agreement to any plans, specifications, determinations, or other actions subject to review pursuant to this Agreement, PennDOT will consult with that party for not more than 15 days to resolve the objection.

B. If the objection is resolved within 15 days, FHWA and PennDOT may proceed with the disputed action in accordance with the resolution.

C. If FHWA determines within 15 days that the objection cannot be resolved, FHWA will forward to ACHP all documentation relevant to the objection, including FHWA’s proposed resolution. Within 15 days of receipt, ACHP will

1. Concur in FHWA’s proposed resolution, whereupon FHWA will respond to the objection accordingly; or

2. Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the objection; or
3. Notify FHWA that the objection will be referred for comment in accordance with 36 CFR § 800.7(a)(4), and proceed to do so. FHWA will take the resulting comment into account in accordance with 36 CFR § 800.7(c)(4).

D. Should ACHP not respond within 15 days, FHWA may assume ACHP’s concurrence in FHWA’s proposed resolution.

E. FHWA will take into account any ACHP recommendations or comments, and any comments from the other signatories or consulting parties, in reaching a final decision regarding the objection. The signatories will continue to implement all other terms of this Agreement, that are not subject to objection.

F. FHWA will provide the signatories with its final written decision regarding any objection resolved pursuant to this Stipulation.

G. FHWA may authorize any disputed action to proceed, after resolving the related objection pursuant to this Stipulation.

H. At any time while this Agreement is in effect, should a member of the public object in writing to implementation of its terms, FHWA will notify the other signatories in writing and take the objection into consideration. FHWA will consult with the objecting party and, if that party so requests, the other signatories, for not more than 15 days. In reaching its decision regarding the objection, FHWA will take into consideration all comments from these parties. Within 14 days after closure of this consultation period, FEMA will provide the other parties with its written decision. FHWA’s decision will be final.

I. Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR § 800.4(c)(2).

XV. Review and Duration

A. PennDOT shall provide a list of all non-exempted Emergency Activities under each declared emergency to all Parties, within one year of the declaration. PennDOT shall keep copies of all documentation of non-exempt projects for a period not less than three years, and shall make this documentation available for inspection to all Parties and the Public.

B. FHWA shall conduct a review of this PA every five (5) years, and shall invite the ACHP, the SHPO, and the Tribes to participate in that review.

C. This Agreement will automatically expire on December 31, 2014, unless prior to this date the FHWA, PennDOT, SHPO and Council agree in writing to extend it for an additional term.
XVI. Amendments

Any party to this PA may propose to FHWA that the PA be amended, whereupon FHWA shall consult with the other parties to this PA to consider such an amendment.

XVII. Termination

A. Any Party may propose to the other Parties that this PA be terminated.

B. The party proposing to terminate this PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.

C. Should such consultation fail, FHWA, the SHPO, or the ACHP may terminate the PA by so notifying all parties.

D. Should this PA be terminated, FHWA shall comply with 36 CFR Part 800 or another applicable Programmatic Agreement with regard to individual undertakings covered by this PA.
Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION
By: [Signature] Date: 12/3/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION
By: [Signature] Date: 1/4/05
John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER
By: [Signature] Date: 12-8-04

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
By: [Signature] Date: 12/3/04

Seneca-Cayuga Tribe of Oklahoma
By: [Signature] Date:

Shawnee Tribe
By: [Signature] Date:

Delaware Tribe of Indians of Oklahoma
By: [Signature] Date:

Delaware Nation of Oklahoma
By: [Signature] Date:
Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: [Signature] Date: 12/3/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Name] Date: [Date]
John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 12-8-04

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: [Signature] Date: 12/3/04

Seneca-Cayuga Tribe of Oklahoma

By: [Signature] Date: 12/14/04

Shawnee Tribe

By: [Signature] Date: [Date]

Delaware Tribe of Indians of Oklahoma

By: [Signature] Date: [Date]

Delaware Nation of Oklahoma

By: [Signature] Date: [Date]
Execution of this PA by FHWA and the ACHP, and the implementation of its terms, evidence that FHWA and have afforded the ACHP an opportunity to comment on Emergency Relief projects and their effects on historic properties; and that FHWA has taken into account the effects of Emergency Relief projects on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

By: [Signature] Date: 12/3/04

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature] Date: 

John M. Fowler, Executive Director

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 12-8-04

CONCUR:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: [Signature] Date: 12/3/04

Seneca-Cayuga Tribe of Oklahoma

By: [Signature] Date: 

Shawnee Tribe

By: [Signature] Date: 

Delaware Tribe of Indians of Oklahoma

By: [Signature] Date: 

Delaware Nation of Oklahoma

By: [Signature] Date: 12-14-04
Appendix A

Eligible Emergency Activities

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements (including bridges) as necessary to restore the facility to pre-disaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of-way (ROW);

(2) Restoration of stream channels outside the highway ROW when:
   (i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and
   (ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster;

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair;

(7) Temporary work to maintain essential traffic, such as raising roadway grade during a period of flooding by placing fill and temporary surface material;

(8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame. Such grade raises are not considered to be a betterment for the purpose of 23 CFR § 668.109(b)(6); and

(9) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.
Appendix B
National Park Service Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR § 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

2. At least four months of supervised field and analytic experience in general North American archeology, and

3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.
Appendix C
Consultation Forms
PennDOT Emergency Relief Projects  
Section 106 Consultation

Date: ER #: MPMS #:  
County: Municipality:  
S.R.: Section: Name:  
Lead Agency: FHWA

To: Jean H. Cutler, Director  
Bureau for Historic Preservation  
Pennsylvania Historical and Museum Commission

From: Dean A. Schreiber, Director  
Bureau of Design  
Pennsylvania Department of Transportation

As per agreement between the Pennsylvania Historical and Museum Commission and the Pennsylvania Department of Transportation, the Department finds that the above-referenced Emergency Relief project has No Effect or No Adverse Effect on historic properties.

The following documentation is included:  
☐ a copy of the Cultural Resource Field Assessment Form  
☐ a description of the project  
☐ the location of the project mapped on a USGS 7.5 Minute Topographic Map  
☐ abbreviated archaeological survey report  
☐ Other:_________________________

Historic Structures CR Professional  Archaeological CR Professional

If the Department does not receive an objection within 7/15 days of your receipt of a notification of this finding, the Department shall proceed with this project without further review. If you have any questions please contact Ira Beckerman @ 772-0830.

cc: FHWA  
EQAD, CR Section  
District Environmental Manager:  
CR Professional Submitters:

To be completed by District Professional:  
☐ No objection received from SHPO. Proceed with Project.  
☐ Objection received from SHPO. Do not proceed until EQAD contacted

Date: ____________________  
By:_____________________

SHPO rec’d date:  
Date of 7/15 days: ____________________
Emergency Relief Projects
Cultural Resource Field Assessment and Finding
Historic Structures - 1

County______________________     SR_______
                                   Sec_______
Municipality(ies)________________________________________
Name of Project ___________________________________________
USGS Quadrangle(s)________________________________________

Project Description Attached:

1. Area of Potential Effect Description:

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

2. Sources Checked:
   □ National Register Files
   □ PHRS Files
   □ Historic Maps
   □ Local Historical Society
   □ Other_______________________________________________________

3. Identified Eligible Properties

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<th>Identified Eligible Properties</th>
<th>Reference</th>
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Environmental Review Number________________________
Comments:


4. Finding:
   - No Historic Properties Present or Affected
   - No Historic Properties Present
   - No Historic Properties Affected
   - No Historic Properties Adversely Affected

   Basis for Finding:


5. Recommendation for Next Action:


CR Professional: ____________________________ Date: _____________

Environmental Review Number________________________
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Emergency Relief Projects
Cultural Resources Field Assessment and Finding
Archaeology - 1

County__________________  SR_______  Sec_____
Municipality______________________________________
Name of project____________________________________
USGS Quad_______________________________________
Project Description Attached:

1. Area of Potential Effect Description:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. Sources Checked:
   ◯ PASS Files
   ◯ Historic
   ◯ Maps
   ◯ USGS County Soil Map(s)_________________________
   ◯ Other_________________________________________

3. Known Archaeological Resources:
   Historic
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

   Prehistoric
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

4. Type and estimated amount of disturbance and how estimated:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Environmental Review Number_______________
Name of Project: ________________________________

5. Archaeological potential:
   Historic: H M L  Prehistoric: H M L

   Justification:
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

6. Finding:
   ☐  No Archaeological Resources Present or Affected
   ☐  No Archaeological Resources Present
   ☐  No Archaeological Resources Affected
   ☐  No Archaeological Resources Adversely Affected

   Basis for finding:
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

7. Recommendations for next action (if appropriate):
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

CR professional: ___________________ Date: ____________

Environmental Review Number ____________
Appendix D
Documentation Level for Historic Bridges

State Level Documentation

A. Building Description and History

The applicant must submit a completed Pennsylvania Historic Resource Form (PHRS) including a description and history of the building/structure. The date of construction and historic uses should be documented by reference to historic maps, deeds or other appropriate sources listed in the Bureau for Historic Preservation Biographical References.

B. Photography

Photographs must show all exterior elevations of the building/structure as well as any significant interior features (if applicable). Photographs should be labeled in pencil with the name and address (including county) of the property, date and view shown in the photograph (i.e. east elevation). Photographs must be taken with 35mm or larger format cameras with black and white print film. Photographs should be placed in acid-free envelopes and not mounted to the PHRS forms. Prints may be 3 ½” x 5” or larger. Negatives must be housed in polypropylene sleeves, labeled with the same information as the photographs, and submitted to PHMC/Bureau for Historic Preservation.

C. Map Location

Submit a U.S.G.S. quadrangle, 7.5 minute map showing the outline of the property associated with the buildings (for building recordations). A site map must also be submitted which includes the property boundaries and the location of the buildings outlining the walls at ground level (building's footprint), noting the dimensions and indicating porches with dashed lines.