

Section 106 Programmatic Agreement

2010-11 Annual Report

(Covering the period May 4, 2010 through May 3, 2011)

FINAL



Prepared by:

Cultural Resources Section, Bureau of Project Delivery
Pennsylvania Department of Transportation
March, 2012

For the:

Federal Highway Administration, Pennsylvania Division
Pennsylvania State Historic Preservation Officer
Advisory Council on Historic Preservation

Preface

Part 1 of this report was prepared in June of 2011 and circulated to the Federal Highway Administration, the Advisory Council on Historic Preservation, the Pennsylvania State Historic Preservation Officer, and PennDOT Environmental Units for review and comment prior to holding a meeting to discuss the results of the first year of operation under the new Section 106 Programmatic Agreement (PA). Written comments have been added to Section VIII of Part 1.

A meeting with the signatories of the PA was held on November 16, 2011. A summary of the meeting and recommendations for improvement are provided in Part 2.

Part 1

I. Executive Summary/Introduction

On March 18, 2010, the Pennsylvania Department of Transportation (PENNDOT), the Federal Highway Administration (FHWA), the Pennsylvania State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) executed a program-wide [Programmatic Agreement](#) (PA) under Section 106 of the National Historic Preservation Act.

The PA applies to Federal-Aid projects; it does not cover State-funded projects under the Pennsylvania History Code or projects that are subject to Section 106 through a USACE Section 404 Permit.

The Agreement delegates decision-making authority from FHWA to two PennDOT groups at two levels of review. PennDOT District environmental staff, called District Designees (DD) that have had basic Cultural Resource training may exempt certain projects that are not likely to have effects on historic resources. All other projects must be reviewed by PennDOT Cultural Resource Professionals (CRPs) who meet the qualification standards published in 36 CFR 61. CRPs have the authority to make exemptions and findings of eligibility and effect in most cases.

Under Stipulation X.D of the PA, PennDOT is required to prepare an annual report on activities carried out under the PA, for submission to the FHWA, SHPO and ACHP. The report is to be submitted to the signatories of the PA within 30 days of the anniversary of the execution of the PA. PennDOT did not begin to implement the PA until May 4 of 2010. With the agreement of FHWA and the SHPO, PennDOT established the review year as beginning on May 4th, with the report to be due June 4th each year.

This document summarizes activities between May 4, 2010 and May 3, 2011. During the first year of operation under Appendix C of the PA, 558 projects were exempted from further review by DDs and CRPs. PennDOT CRPs reviewed an additional 356 non-exempt projects, many of which had multiple findings. The SHPO raised 7 objections on findings made under the PA.

This annual report also summarizes concerns raised by the public and consulting parties on particular projects, and reports on the training provided by PennDOT to implement the new PA. Finally, the report discusses the changes that were made to the

list of exemptions in Appendix C of the PA, and provides other suggestions and recommendations.

II. Programmatic Agreement

The Section 106 Programmatic Agreement delegates responsibilities from FHWA to PennDOT for consultation with the SHPO and consulting parties for determining a project's APE, for soliciting consulting parties, for making findings and determinations of National Register eligibility and project effect, for consultation with native Tribal organizations, and for initiating consultation on the resolution of adverse effects. The PA also allows PennDOT to exempt projects from review if they meet certain conditions. The SHPO has agreed to focus their reviews on projects that have adverse effects and certain projects with no adverse effects. In lieu of SHPO review of every project, PennDOT will making findings publicly available and standardize seeking consulting parties through the establishment of a public involvement clearinghouse. The PA also incorporates some streamlining and time-saving measures: electronic documentation and more use of forms rather than reports; application of agreed-upon standard treatments to reduce consultation; use of a Deferral of Archaeological Testing form instead of execution of project PAs when archaeology cannot be completed before NEPA approval; and, use of a Letter of Agreement (LOA) to reduce the number of required legal signatures on agreement documents.

III. Preparation for Implementing the PA

Prior to receiving authorization to begin operating under the PA, PennDOT undertook several activities to prepare PennDOT, SHPO, and FHWA personnel for the transition to the new process. A requirement of the PA was the development of a Cultural Resource Handbook to guide the implementation of the PA, and provision of training to the PA practitioners.

A. Cultural Resources Handbook - January and November Versions

Prior to signing the PA, the signatories required PennDOT to produce a [Cultural Resource Handbook](#) that provides guidance on how to implement the PA. PennDOT completed the handbook in January of 2010. A revised version was issued in November of 2010 to incorporate changes requested by the Advisory Council on public involvement prior to signing the PA, and changes that were made to Appendix C of the PA after the agreement was signed (see Section VI).

B. Administrative Procedures

PennDOT issued internal Administrative Procedures that provide step-by-step instructions on creating and posting electronic documents and findings

on a server provided by Indiana University of PA, initially, and later, on the Project PATH website (below). The Administrative Procedures covers preparation and submission of notifications to the FHWA, SHPO, Tribes and consulting parties.

C. Electronic Documentation – Indiana University of Pennsylvania (IUP) and Preservation Pennsylvania Partnerships

One of the goals of the PA was to create a transparent process by making documents and findings easily accessible to the SHPO, Tribes, consulting parties and the public. To that end, PennDOT worked with Indiana University of Pennsylvania (IUP) to dedicate an IUP server for PennDOT to post documents and findings. Through a password, agencies and consulting parties can access the information on the IUP server. The server has a secure side for archaeological site information and a public side for all other information. This arrangement was an interim solution until PennDOT, in partnership with Preservation Pennsylvania, developed [Project PATH](#) (Pennsylvania Transportation and Heritage). Project PATH took the previously existing Cultural Resource Document Tracking Database and added features that allowed CRPs and others with system permission to be able to upload documents and to make those documents accessible to anyone. CRPs could generate notifications to SHPO, consulting parties, and potential consulting parties through Project PATH. Currently, archaeological site information is still housed on a secure IUP server, but coming upgrades will add a security feature for archaeology. Project PATH is hosted by Preservation Pennsylvania and was launched in November of 2010.

D. Training and Delegation under the PA

The PA contains a requirement that anyone reviewing projects must receive periodic training in order to maintain delegation to make exemptions or findings. [District Designees \(DDs\)](#) and [CRPs](#) must receive an overview of the PA, and attend a Section 106 course. Refreshers are required on a designated schedule. PennDOT has also agreed that DDs and CRPs will attend the PHMC's Essentials courses- the Basics course for DDs, and all four courses for CRPs. Prior to the implementation of the PA, PennDOT provided four training sessions on the new PA and the Cultural Resources Handbook to PennDOT CRPs, PennDOT Environmental and Engineering staff, SHPO staff, FHWA, and consultants.

IV. Implementing the PA - Project Results

A. Exemptions

Appendix C of the PA contains a list of project activities that may be exempted from further Section 106 review provided that the activities meet certain conditions. The activities on the list, with the conditions imposed, have low potential to effect historic properties. Appendix C is divided into two sections, the A list and the B list. Activities on the A list may be exempted by DDs or CRPs, those on the B list can be exempted only by CRPs. Between May 4, 2010 and May 3, 2011, [558 projects were exempted](#) by DDs and CRPs.

The following table summarizes the exemptions for each District and who made the exemptions.

District	Designee	CRP	TOTAL
1	27	10	37
2	20	39	59
3	39	34	73**
4	36	20	57*
5	57	25	82
6	0	33	33
8	47	17	64
9	32	21	53
10	18	14	32
11	7	44	51
12	8	9	17
TOTAL	291	266	558

*The person making the exemption for one project in District 4-0 was not identified.

**This includes one project that was categorized as District 99-Central Office but is located in District 3-0.

In most districts, exemptions were made both by CRPs and DDs. In District 6-0, the CRPs make all exemptions.

B. CRP Findings/Postings

Projects that did not qualify to be exempt under Appendix C were reviewed by the CRPs. There were a total of [818 findings/postings](#) associated with 356 projects made on the IUP server and Project PATH between May 4, 2010 and May 3, 2011. Each finding or posting is standardized by category, and Major Category (Column I in the list) was used to generate the statistics in the table below.

<u>Early Coordination Activities</u>	
Archaeology Modeling	1
Geomorphological Testing	9
Scoping/APE/Project Notification	93
Identification/Determination of Eligibility	89
<u>Determination of Effect</u>	
Number of Projects	209
Number of Individual or Combined Findings	344
<u>Public Involvement</u>	
Consulting Party Consultation	55
Tribal Consultation	58
Resolution of Adverse Effects – Consultation and Preparation of Agreement documents	56
Standard Treatment	1
Mitigation Commitment Coordination	30

Early Coordination Activities includes information from the Early Coordination category as well as the Scoping categories on the list. For those projects where an immediate finding of no effect cannot be made after scoping, an Early Notification/Scoping form is posted. Geomorphological testing and Archaeology modeling are used to determine the age and integrity of the soils and the probability for archaeological sites. Please note that PennDOT has utilized geomorphology studies more extensively than the nine instances reported under Early Coordination. If the results of a geomorphology study indicate that there is potential for archaeological sites and an archaeological survey is conducted, the geomorphology report is usually appended to the archaeological survey report.

The data for Determination of Effect are presented in two ways. The first number – 209 - is the total number of projects where Effect determinations were made. Each project often has more than one effect finding. In many cases a finding for Archaeology and Above-ground was made separately. The second number -344 - is the total number of effect findings that were posted.

Under Public Involvement, the number for Tribal Consultation in the table may be lower than the actual number. Prior to Project PATH, tribal notifications were automated within the former Cultural Resource Database. This feature was not carried over into Project PATH, and tribal notifications have been generated outside of the PATH environment. The information on these notifications may not have been entered into PATH.

One Standard Treatment was recorded for the South Highland Avenue Bridge Replacement in Allegheny County. The replacement bridge will be designed similar to the existing steel multi-girder structure, and will be placed on the existing 1876 stone pier and abutments. After consultation with the appropriate parties, the standard treatment was applied to resolve adverse effect.

The use of geotextile and fill to protect archaeologically sensitive areas during construction is a common practice. The fact that none was recorded in the Standard Treatments category may either reflect the unfamiliarity of the CRPs with the new category in Project PATH, or that in no case was geotextile and fill agreed to as a means of avoiding effects or potential effects.

C. Objections by the SHPO

The SHPO objected to 7 findings made by the CRPs. The [list of objections](#) includes a short paragraph on the nature of the objection and how it was addressed. In two cases, the SHPO disagreed with PennDOT's determination that properties are eligible for the National Register. In the SHPO's opinion, these properties are not eligible. Five of the objections were disagreements with PennDOT's effect finding.

D. Concerns of the Public

Concerns expressed by the public on cultural resource issues, and how these concerns were addressed is provided in a [table listing the projects](#). The CRPs provided information for projects in Districts 4, 5, and 8. District 12 reported that there were no concerns raised by the public.

V. Quarterly Review Meetings

Stipulation X.C of the PA specifies that PennDOT and the SHPO will meet on a quarterly basis during the first year to review implementation and discuss any issues or recommendations for improvement. Quarterly review meetings were held on [August 3](#) and [December 3, 2010](#), and [March 18, 2011](#). Some of the more important issues raised at the meetings included discussion of amendments to the Appendix C exemption list (below), tweaking of the effect finding forms, providing the SHPO with archival paper copies of archaeology reports and PHRS forms, and discussion on what should be included in the annual report.

VI. Revisions to Appendix C of the PA

[Revisions to the Appendix C list of exemptions](#) were proposed by PennDOT. For certain activities that were already on the list, PennDOT proposed that the CRPs be allowed to make an exemption when the conditions that would allow the District Designees to make the exemption were not met. Specifically, if the CRPs determine that there are no properties listed or eligible for the National Register, they may exempt projects involving installation or replacement of lighting, sidewalks, guiderail, and activities in the median. These revisions were approved by PHMC and FHWA.

VII. Conclusions and Recommendations

From PennDOT's perspective, the conclusions and recommendations for the first year's operation of the Section 106 Programmatic Agreement should be divided into internal and external parts. While internal operations are not normally relevant to conclusions of a publicly operating Programmatic Agreement, in this first year internal changes were substantial and do bear a mention. In order to implement the PA, PennDOT had to develop a handbook and administrative procedures, train Department personnel and consultants on the changes, and move from a paper-based operation to an electronics-based operation. CRPs had to learn how to accept, review, manage, and document Section 106 without necessarily having a paper copy in front of them. (In addition, the PHMC also had to adapt to a paperless environment.) Part of the transformation involved language and terminology, e.g. postings instead of submittals. Technological changes included adapting to two separate server systems, learning FTP protocols, how to assemble electronic document packages in Adobe Acrobat Pro, upgrading Internet Explorer to Version 8.0, and in some cases upgrading equipment to handle dual screen monitors. In the middle of the first year, Project PATH went live, bringing with it an additional layer of learning and administrative procedures. To the degree that this transformation was invisible to consulting parties and the public and 'just happened,' it was successful.

These internal changes resulted in two-week time savings for each submittal/posting to the FHWA or the PHMC, since the content documents could be made available to the consulting agencies the same day they were posted. Consultants could also provide deliverables to CRPs as quickly by e-mail or FTP. Substantial printing, collating, and mailing costs were saved by moving to an electronic document platform. Instead of multiple copies mailed out, a single electronic copy could be made available through either the IUP or the later Project PATH servers. Paper copies became the print-on-demand exception rather than the rule.

For the external stakeholders, the PA expanded the authority of PennDOT CRPs to make findings of eligibility and effect. Over 900 projects were considered under Section 106, of which 61% were exempted. While the number of projects covered by the PA represents an incremental increase over the Minor Projects PA that preceded it, the percentage of exemptions remained approximately the same. In addition, the number of objections reported is within the annual range of objections received under the Minor Projects PA, suggesting that PennDOT's ability to handle its responsibilities under Section 106 remains high.

Under this PA, PennDOT developed its first cultural resources handbook. The lack of a handbook in previous years had been a problem for the program. Availability of a handbook provides consistency in guidance for the 11 Engineering Districts, and for the consultants conducting work for PennDOT.

Under the previous Minor Projects PA, projects with adverse effects were not covered. Neither were projects for which archaeology needed to be deferred until final design. In both cases, an MOA or project-specific PA needed to be executed. Under this PA, there is a simple letter process for deferring archaeology. In addition, when adverse effects are mitigated in a routine fashion and there are no extraneous consulting parties, a concise and expedited letter of agreement (LOA) can be executed. Both provisions – deferral of archaeology, and LOA's have substantially reduced the number of memorandums of agreement or project-specific programmatic agreements executed in a year. For those select projects with adverse effects or potential adverse effects, the ability to rapidly conclude Section 106 without sacrificing resource protection has been a welcome improvement.

Finally, the new PA brings a fundamental shift in thinking about consultation and public involvement. Other than the inclusion of Federally-recognized tribes into the consultation process, the old model was to work with the SHPO, and FHWA if necessary, to reach consensus, and then conclude Section 106, unless there were other identified consulting parties. Solicitation of consulting parties and public involvement was left to each project team to work out, with variable efforts and results. Under the PA, solicitation of consulting parties is standardized and required for all projects that involve effects to historic resources through Project PATH. Furthermore, notice of PennDOT findings to the public are required for all FHWA-aid projects through Project PATH, in close to real time. As the SHPO has taken on more of an oversight role for PennDOT Section 106 actions, consulting parties and the public represent a new set of potential project-specific watchdogs. Transparency in PennDOT actions, active solicitation of consulting parties when there are likely effects, and focused attention by the SHPO on resolving adverse effects summarize the new model.

VIII. Comments of Signatories on Part I of the Annual Report

In June of 2011, Part 1 of this report was circulated to the FHWA, the ACHP, the SHPO, and PennDOT Environmental Units for review and comment.

Written comments were received from the Advisory Council on Historic Preservation, Mark Young of PennDOT District 11-0, and Kris Thompson of District 5-0.

Part 2

Part 2 of the report summarizes the results of the annual review conducted by the signatories of the Section 106 PA, per Stipulation X.E, and makes recommendations for improving the process.

I. Results from the Annual Review Meeting (ARM)

Attendees: Carol Legard, ACHP; Deborah Suciu Smith, FHWA; Doug McLearn, PHMC; Mark Shaffer, PHMC; Steve McDougal, PHMC; Susan Zacher, PHMC; Ira Beckerman, PennDOT; Kara Russell, PennDOT, Chris Kula, PennDOT.

On November 16, 2011, the signatories to the Section 106 PA met to review the performance of the first year of operation under the PA. Prior to the meeting, a randomly selected [sample of projects from Districts 3, 5, 11, and 12](#) were reviewed by representatives from PennDOT and the SHPO. The Districts were selected based on FHWA's schedule for reviewing NEPA Categorical Exclusions that have been delegated to PennDOT. The projects were selected from findings of effect and exemptions that were made between May 4, 2010 and May 3, 2011.

[Review forms](#) were developed that contained a list of questions focusing on decision-making, consultation, and documentation by the PennDOT Cultural Resource Professionals (CRP) and District Designees (DD). A maximum of 20 projects was targeted for review in each District, five each of Exemptions, No Historic Properties Affected, No Adverse Effect, and Adverse Effect findings. Generally, there were less than five No Adverse Effect and Adverse Effect findings per District.

During the ARM meeting, the signatories discussed the results of the reviews, and a phone call was held with each District. General trends were noted, and the Districts were asked questions on specific projects. The text below in italics represents responses or information provided after the conference call by either the District or the Cultural Resource Unit in the Bureau Project Delivery.

A. Review of District 3-0

District Attendees: Matt Hamel, Ray Kennedy, Kyle Bunce

In general, District 3-0's application of the PA is good. There is good coordination between Matt Hamel and Scott Shaffer. The exemptions made by the District

Designees were appropriate. Most of the discussion focused on the following truss bridge replacement project.

MPMS 47303 – Snyder County Truss over Middle Creek - Adverse Effect

The SHPO has concerns on consultation and public involvement, that consultation appears to have begun late in the process, and that comments made by consulting parties were not addressed. Also, there was very little documentation concerning archaeology. The following questions were asked of the District.

1) Was an effect finding made for Archaeology? If not, why not?

Scott Shaffer, the Archaeologist for District 3, was not present at the conference call and this question was answered afterwards. *While there was some informal consultation with the SHPO on archaeology, and archaeology was superficially mentioned in the determination of effects report for the bridge, no effect finding for archaeology was prepared and posted on Project PATH. Information was provided to the preparers of the effects report, but the information that was incorporated into the report did not adequately address effects for archaeology.*

2) The sentiment of some of the reviewers was that consultation was pro forma. What is the purpose of consultation? Is it occurring early enough?

The District has some concerns about the timing of consultation. Sometimes consulting parties don't want to comment until they can see the SHPO's comments, and SHPO generally does not want to comment until they receive consulting party comments. The District is confused about what should happen first.

Kara stated that the Bridge Rehabilitation Feasibility report is intended to be an interim step for consultation between determinations of eligibility and effect, as a consideration of alternatives, including avoidance alternatives. Although Deborah pointed out that feasibility reports are not specifically defined under Section 106, PennDOT feels that they are useful because they include consideration of avoidance and minimization, not just mitigation. The reports should be submitted to the FHWA, SHPO and consulting parties as part of the consultation to consider alternatives.

Doug suggested having a meeting with the SHPO and consulting parties prior to preparing documentation.

It should be noted that consultation to resolve adverse effects is not restricted by a 30-day clock. The resolution of Adverse Effects may require more than a single meeting with the SHPO and consulting parties.

3) What would the District do differently, if anything, based upon what they know now?

Better evaluation of the data that goes into the feasibility report and a more thorough consideration of the data. The District sees benefit in doing a Feasibility report, and requested some guidance on the timing of consultation.

4) Why was the funding for the management plan changed to the historic bridge DVD?

This change was made at the request of the SHPO. At the time the commitment for the management plan was made, it was assumed that there was sufficient funds to complete the plan, but later it was determined that this was not the case. Carol noted that consulting parties should have been notified of commitment changes.

5) Why was a LOA done instead of a MOA, given the consulting party objections?

PennDOT acknowledges that a MOA should have been prepared, rather than a LOA.

B. Review of District 5-0

District Attendees: Kris Thompson, Jerry Neal, Jim Ruth, Jose Velasquez, Steve Bruch

District 5-0's application of the PA is good. The CRPs Kevin Mock and Kris Thompson were cited as doing a great job, and it was noted that Kris Thompson is especially thorough in her documentation. Susan noted that there was excellent consultation on the Coplay-Northampton bridge project. The exemptions made by the District Designees were appropriate

The following general trends were noted by the reviewers.

- There is a concern about documenting project funding source. Three of ten randomly selected projects that were marked as federal funding in Project PATH, are, in fact, 100% state funded.

- Use of geotextile and fill to protect archaeologically sensitive areas should be recorded as a standard treatment in Project PATH.

The following questions were asked of the District.

1) Three projects (MPMS 11129, 11614, 51568) where tribal consultation was initiated had no evidence that the archaeology reports were sent to consulting tribes. Do you have documentation that this was done?

No, but the District has since obtained copies of these reports and sent them to the consulting tribes.

2) MPMS 83115 – Lehigh County, SR 309 Betterment - Exemption

The project description included several activities and a vague reference to “miscellaneous construction items.”

What is meant by “miscellaneous construction items”? Are all of these exempt activities?

When the project description is vague, the district environmental unit asks the project manager what activities are included. In this case, the District Designee determined that all the activities for this project qualified for exemption.

C. Review of District 11-0

District Attendees: Mark Young, David Anthony, Joe Verbka, George Kronz

In general, the application of the 106 PA by the CRPs and DDs was good. There appears to be good coordination between David Anthony and Joe Verbka. Except for one project (MPMS 29086) where there was a misinterpretation of the exemption, all other projects exempted by the District were appropriate.

One minor general trend was noted by the reviewers. On four of the projects (MPMS 50858, 69091, 79881, 87749), there was inconsistency in documenting CRP scoping dates. The scoping date on the effect finding form does not match the CRP scoping date in the NEPA document.

The following questions were asked of the District.

MPMS 29086 – Beaver County SR 68/SR1024- SR 1039 - Exemption

The project involves the replacement of a stone arch culvert. Exemption 2.B.1(c) is written such that it could allow a CRP to determine that a stone arch culvert is not eligible, which would then allow the CRP to exempt the project. However, this was not the intent of the exemption in regards to stone arch culverts, since under Stipulation II.H of the PA, stone culverts less than 20 ft. are NOT among the types of structures categorically not eligible. Stipulation 2.B.1(a) is intended to limit the exemption to structures less than 50 years old, categorically not eligible structures, or previously determined not eligible structures.

1) Can you explain why you exempted the project? Did you make a finding that the culvert was not eligible?

This was a misinterpretation of the intent of the exemption. The CRP did determine that the culvert was not eligible.

MPMS 91525 – PA 65/Allegheny Co. SR 51 Improvement - No Effect

The project involves resurfacing and improved signals and guiderail near Old Economy Village, a National Historic Landmark. It was not evident from the documentation whether there was any consultation with Old Economy Village. After the CRPs had made a finding of No Historic Properties Affected, the NEPA document listed the project as exempt.

1) Did you coordinate with Old Economy Village?

Yes, two of the individuals listed in the notification are associated with Old Economy Village.

2) Why was the project exempted in the NEPA BRPA document after the CRPs had made a finding of No Historic Properties Affected?

This is due to a glitch in the CE Expert System where the system requires the citation of an exemption when there is no potential to affect historic properties. This problem is being resolved by the PennDOT Environmental Policy and Development Section through revisions to the CE Expert System.

MPMS 27273 – Allegheny Co. Ohio River Blvd. Bridge No. 2 – No Adverse Effect

1) Why did coordination on archaeology occur only after the project was let? Or is the MPMS date wrong?

The date in MPMS is correct. The District thought that there may have been a PCRRF submitted to the SHPO several years ago. *After the conference call the District searched project files but could not find any earlier documentation on Archaeology. Although the original PCRRF could not be found, the Determination of Effects report mentions the submittal of a PCRRF to the SHPO in 1995. The report also contains a brief statement that an archaeological survey was not necessary because all of the project activities would occur within previously disturbed areas.*

MPMS 50958 – Allegheny Co. Squirrel Hill Tunnel Rehab – No Adverse Effect

1) Why was the Adverse Effect finding removed from Project PATH?

FHWA requested that the Adverse Effect finding be removed from Project PATH.

2) Why was the project finding changed from No Adverse Effect to Adverse Effect without consulting with FHWA?

Once the CRP determined that there was an adverse effect, FHWA was invited to participate in resolving the adverse effect. Ultimately, a solution was found that resulted in a finding of no adverse effect.

Note: The above was the answer provided at the time of the ARM conference call. Subsequently the District CRP provided clarification of how the project developed: The project was not changed from No Adverse Effect to Adverse Effect. The District CRP, of his own accord and without consultation with FHWA, originally determined that the project would be an adverse effect. He posted a finding of adverse effect and concurrently sent the notification to PHMC and FHWA (in accordance with the CR handbook in cases that are not controversial). Within a day of making the finding of Adverse Effect the FHWA reviewer contacted the District CRP and indicated that FHWA feels that the project is not an adverse effect. After discussions with FHWA, the District CRP posted a new finding of No Adverse Effect to which the PHMC objected. After meeting with the PHMC, FHWA/PennDOT reiterated a finding of No Adverse Effect in a letter to PHMC to which PHMC ultimately concurred.

D. Review of District 12-0

District Attendees: Kim Ansel, David Anthony, Trisha Crowe

In general, the application of the PA by the CRPs and DDs was good.

In three cases (MPMS 30749, 61987, 77418), the project finding of effect was not documented in Project PATH. When the archaeology and above-ground findings were made separately, both forms indicated that the finding was not complete.

The following questions were asked of the District.

MPMS 87081- Fayette Co. Ohioyle Smart Transportation - Exemption

The project description in the CEE and the Cultural Resource documentation did not exactly match, and from some of the terminology used, it was unclear exactly what activities were included in this project.

1) What is meant by “implementation of other traffic calming techniques” and “intersection improvements to support the development of a new visitor’s center” and “gateway enhancements”? Were these defined for the CRPs who approved these activities as being exempt?

The existing roadway will be reconstructed to include bike lanes, sidewalk repair, drainage improvements, pedestrian crossing, signage, intersection improvements to support the new visitor’s center, and some additional parking along the ROW, which should act as a traffic calming measure. All work will be constructed within existing right-of-way. The project had originally included gateway enhancements that were later dropped from the project.

MPMS 30749 – Washington Co. B&O Railroad Bridge Replacement – No Effect

1) Were tribes notified? Do you have documentation?

Ryan Rowles, the District Archaeologist was not able to participate in the conference call and this question was answered afterwards. *No tribes were notified about the archaeological survey that was done. This was an oversight.*

2) Have you established a protocol for documenting the effect finding for the project in Project PATH?

The District feels that this has already been addressed. There is better coordination between CRPs now that David Anthony has been assigned to cover District 12.

MPMS 29949 – Fayette Co. Torchlight Intersection Improvement – No Effect

- 1) Any questions regarding the observations made by the review team?
No
- 2) Who's responsible for updating MPMS? -
The project managers.
- 3) Why is no CE in preparation yet? This was a curiosity question by the reviewers.
By the time of the review meeting, the CE 1b was in preparation.

MPMS 30949 – Washington Co. SR 519/1055 Intersection – No Adverse Effect

- 1) Why is the first notification to tribes with the submittal of the Archaeology report (or is there just no evidence in Project PATH)?

Ryan Rowles, the District Archaeologist was not able to participate in the conference call and this question was deferred until later. *There were three alternatives under consideration, two of which would require archaeological testing, and the third would not. By the time the District chose an alternative, archaeological testing had to begin immediately in order to meet the NEPA date. In addition, there was a higher probability for historic archaeology than pre-contact, so Ryan Rowles made the decision not to send out an initial notification, but waited to send the completed report to tribes with interest in that region.*

II. Recommendations to Improve the ARM Project Review Forms

Several recommendations were made to improve the ARM project review forms.

- A field should be added for recording the presence of historic properties in the APE.
- For the question “Did consultation with Tribes/Nations/Consulting Parties/Public occur at the appropriate time in the Section 106 Process?,” the question should be asked separately of the Tribes/Nations, and the Consulting Parties/Public. This creates less confusion if the timing of consultation was not the same for the different groups, and is more in line with how the other questions on consultation are phrased.

- Some projects have long histories and a field should be added so that a project history can be incorporated.
- Many questions just have a Yes/No choice. Add other choices such as N/A and/or Undetermined.
- In order to reduce review time, the forms should be pre-populated with the project description, NEPA schedule, and scoping information.

There was some discussion on whether to include field views as part of the ARM. The consensus of the group is that no field views will be held for this years' review. For future ARMs, a field view would only be scheduled if the review of the documentation raises a red flag. The use of PennDOT video-log and/or Google Earth to get a better feel for the project surroundings and conditions will be incorporated into the next ARM and may alleviate the need for field views.

Deborah feels that the current format of the review did not provide a good sense of how long the Section 106 process is taking. PennDOT notes that this information could be derived from the forms by looking at "E&E Scoping Date", "CR Scoping Date" and "Finding Date", but was not a specific focus of this ARM. The length of the process might be considered in a future ARM.

III. Recommendations for Improving the Process

Several recommendations were made by the ACHP, SHPO, and PennDOT for improving the process. Although there were project specific comments for each of the Districts that were reviewed, the concerns are generally not chronic or egregious enough to warrant follow-up action for each District individually.

Carol feels the PA is working well and only has concerns with consulting parties and the replacement of historic bridges. PennDOT does a good job with notifications and getting information out to the public through Project PATH, but doesn't always provide documentation of how consulting party comments are addressed. The Advisory Council on Historic Preservation (ACHP) has received several letters from consulting parties who feel their concerns are being ignored, particularly in regards to historic bridges. Carol made the following recommendations and suggestions for better interaction with consulting parties and for considering their concerns on historic bridges.

- A programmatic approach to historic bridges should be considered. Truss bridges are often unable to meet current load standards, and consulting parties may be misled into thinking that they have input into the decision for many of these bridges that cannot be rehabilitated.
- Project recommendations should focus on purpose and need. Deborah pointed out that this is a NEPA issue and is being addressed through the Linking Planning and NEPA initiative. PennDOT is now considering purpose and need during planning, and is a factor in the decision as to which projects are selected for the Transportation Improvement Program (TIP).
- Provide a workshop or training on dealing effectively with the public. Consulting party comments need to be considered, and training may help PennDOT personnel who are involved with consulting parties and the public.
- Bring in mediation experts when there are difficult consulting parties.
- Increase the number of consulting party meetings for contentious projects and link them to the different Section 106 steps: APE, Determination of Eligibility, Determination of Effect.

In response to Carol's recommended programmatic approach for historic bridges, PennDOT noted that a management plan for truss bridges is being initiated. In addition, the bridge feasibility report is intended to take a hard look at the feasibility of rehabilitating a historic bridge rather than replacing it, especially in rural areas with low traffic volumes.

Carol is not as concerned about soliciting for consulting parties on bridge rehabilitation projects. Consulting party solicitation should take into consideration the nature of the project and expected interest. Deborah advocates combining NEPA and 106 public involvement when possible.

To address District 3-0's concerns regarding the timing of consultation, Doug recommended that consultation occur with the SHPO and consulting parties prior to the preparation of documentation.

It is Susan's opinion that for context sensitive solutions, the evaluation is too much like rote checking-a-box and not enough case-by-case evaluation. Carol suggests doing a better aesthetic design for the bridge so that fits the context; it is not necessary to build a historic replica.

PennDOT proposes that MOA stipulations on context sensitive solutions be more explicit. Rather than a vague statement that “PennDOT will apply context sensitive solutions to the bridge design”, the stipulation, for example, could reference the 2009 AASHTO Bridge Aesthetic Sourcebook for guidance on designing a bridge that is aesthetically pleasing. Decisions on the design would also take into account the views of consulting parties.

Susan also has a concern with Design/Build projects, that it is hard to consider alternative designs or even alternatives to replacement. Ira pointed out that the NEPA process must be completed before the project is turned over to a contractor, and PennDOT can require a contractor to consult on the design of the bridge. In general, it was noted that PennDOT guidance in Publication 448, Chapter 3.1.2 discourages the selection of projects for design/build that have major environmental issues.

IV. Follow-up Actions

In general, the Districts that were reviewed in this ARM are applying the PA as intended. Based on the observations of the project review team, and the discussion amongst the signatories to the PA, PennDOT recommends these follow-up actions.

A. Modification to ARM Project Review Forms

PennDOT will modify the project review forms as follows.

- A field will be added for recording the presence of historic properties in the APE.
- In the section on Consultation, PennDOT will revise and reorder the questions to 1) ask the question “Did consultation with Tribes/Nations/ Consulting Parties/ Public occur at the appropriate time in the Section 106 Process?,” separately of the tribes/nations and the consulting parties/public; and 2) regroup the questions so that all questions pertaining to tribal consultation are together, and the same with questions pertaining to the public/consulting parties.
- An optional field will be added to the project information section that will allow the inclusion of a project history.

- PennDOT will review the questions and add other response choices (e.g. N/A or Undetermined) where appropriate.
- PennDOT will explore a mechanism for automating the inclusion of project information on the forms in order to reduce the time spent by the reviewers in filling out the forms.

B. Consulting Parties

On a case-by-case basis, PennDOT, in consultation with FHWA, will consider the use of mediation experts when there are difficult consulting parties or contentious issues. The technique should be added as an option in PennDOT Publication 295 – Public Involvement Handbook and Publication 689 – Cultural Resources Handbook.

For projects where there are contentious issues or a lot of public interest, PennDOT will consider increasing the number of consulting party meetings or other opportunities for consultation. Meetings could be held to correspond with the steps in the Section 106 process, or at other appropriate times in project development.

PennDOT will explore the availability of training courses or workshops on effective interaction with the public and will inform project managers and the CRPs of training opportunities. PennDOT has identified a course offered by the National Preservation Institute on conflict resolution for cultural resources, and is planning to bring this training to Pennsylvania in the spring of 2012.

In addition, PennDOT, together with Preservation Pennsylvania, has conducted several 1-day workshops for the public. The workshops include an overview of the Section 106 process with a particular emphasis on how the public can get involved. The most recent workshop was held in Delaware County during February 2012. More workshops are planned in different areas of the state.

C. Bridge Management Plan

PennDOT will continue with the development of a management plan for truss bridges. This will add more predictability to the Section 106 process for these types of bridges, rather than addressing issues of preservation on a project-by-project basis. The management plan will establish a significance hierarchy

for the remaining truss bridges, will provide a protocol for establishing rehabilitation potential, and provide sample evaluations to demonstrate how to apply the hierarchy. The target date for completion of the management plan is June 30, 2012. It is anticipated that the management plan, and an associated white paper, will provide justification for acquiring additional funds to complete individual assessments for those truss bridges that could benefit from one. PennDOT is working with FHWA and the SHPO on this plan, and will provide opportunities for the Advisory Council to participate as well. Information will also be provided to the public through Project Path.

D. Improving MOAs

PennDOT will incorporate more explicit wording into stipulations regarding context sensitive solutions. This would be intended to produce better designs that consider context on a case-by-case basis, rather than contributing to rote decisions.

E. Exemptions

PennDOT will add clarification in the Cultural Resources Handbook that if a culvert is not exempt under PA Stipulation 2.b.1.a, the CRP must make a finding.

V. Conclusions

Overall, PennDOT's performance under the terms of the statewide Section 106 Programmatic Agreement has been good. The review of exemptions and effect findings made by Districts 3, 5, 11, and 12 indicate that both the District Designees and the Cultural Resource Professionals have applied the PA in a responsible manner. Although there were individual findings associated with specific projects that necessitate follow-up or clarifications, the implementation of the PA appears to be consistently and accurately applied.

PennDOT acknowledges that it can improve, particularly in the areas of public involvement and in evaluating alternatives for the rehab/replacement of historic bridges. To that end, a number of follow-up activities have been proposed that would help to improve the process.