

# PENNSYLVANIA

## TRANSPORTATION and TRIBAL CONSULTATION

### NEWSLETTER

SPONSORED BY THE FHWA, PENNSYLVANIA DIVISION AND PENNDOT

Issue 4

Winter 2005/2006

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## **Update on Tribal Consultation Activities at Pennsylvania FHWA and PENNDOT**

Pennsylvania Division, Federal Highway Administration (FHWA) and Pennsylvania Department of Transportation (PENNDOT) staff met with eight federally-recognized tribes with historical ties to Pennsylvania in December of 2004 and February of 2005 to discuss ways to streamline the quantity of projects requiring consultation and the method of consultation.

The meetings were a wonderful opportunity for re-introductions between those that attended the 2003 Intertribal Summit in Harrisburg, Pennsylvania and to make new acquaintances between people who had not yet had the chance to meet.

From the meetings also came a number of activities ....

#### Tribal Consultation Agreements

All parties approved of the idea of drafting formal agreements on tribal consultation with FHWA in Pennsylvania. Such agreements will provide, in writing, details about each parties' role in consultation and how it will be carried out by FHWA and PENNDOT.

A significant benefit to the agreements is that although every agreement was developed from the same template, each tribe has had the opportunity to tailor consultation to their particular needs and concerns. Further, the agreements also have the added benefit of providing a consistent policy for each tribe in order for consistency given personnel changes among any of the parties.

Some of the highlights of the agreements include:

- ⇒ Designated geographic areas of interest for each tribe. Projects falling outside these areas will not require consultation with those tribes who have no interest in that area. This allows all parties to streamline their workload and concentrate on those projects which have real potential to affect the tribes.
- ⇒ Notification conditions tailored to each tribes' interests and desired level of effort. PENNDOT undertakes hundreds of projects each year, however, only a handful have the potential to impact archaeological resources and/or other properties to which a tribe attributes cultural patrimony. According to the wishes of each tribe, the criteria to determine whether consultation is needed on a project can be independently determined; consultation is therefore not tied to NEPA classification but to the potential impact to cultural resources of interest to the tribes.

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## Follow Up Tribal Consultation Activities (cont.)

### Tribal Consultation Agreements (cont.)

⇒ Project information forms will be used which summarize necessary project information into a standardized form. This means less paper for Tribes, and less paperwork on the part of the PENNDOT staff and easily understood information for the tribal staff.

Draft agreements were sent in August of 2005 to each of the eight tribes that participated in the winter meetings. Several have already returned them with comments and are proceeding to the signatures stage.

The Advisory Council on Historic Preservation (ACHP) was provided the opportunity to comment on the agreements in the Fall of 2005. They returned a decision to support the agreement, but felt that there was no need for the ACHP to participate at this time.

Final drafts for review were sent out in February to the tribes for comment. We hope to have an announcement about signed agreements in the next newsletter.

### Modifications to the Project Notification Forms

The bulk of tribal consultation sent out by PENNDOT comes in the form of blue and yellow-coded, one-page letters along with a return envelop to indicate interest. While several Tribes expressed that they liked the color coding, a number of editorial changes were suggested to enhance the consultation process. These included:

- ⇒ Including better location information.
- ⇒ Type of additional information the Tribes want.
- ⇒ Format of additional information.
- ⇒ Include "expect response in" line.

Expect to see changed form by March of 2006 with further changes to come.

### Internet Resources

Finally, progress is moving forward to create a web-based notification system. In the near future Tribes with an interest in a specific geographic area and have on-line capabilities, will be able to access project information and provide their consultation notices all on-line in a secure and easier manner than the current paper process. The information on-line will include survey reports and documentation that would be very time consuming and expensive to send out in paper form. However, if certain Tribes prefer the current paper process, we will continue to offer the information in this format.

### Glimpse of PENNDOT's planned Projects 4 Years in the Future

Before too long an electronic listing and map of all projects in the Transportation Improvement Program (TIP) will be available to provide an opportunity for Tribes to help shape the location and design of the project. However, the 2007 TIP is being updated now. The final TIP of new projects is due this summer. As part of the development of the 2007 TIP, each planning region will be asking for public review and comments on the draft TIP this spring. Please contact the planning partner which covers the regions of Pennsylvania you are interested in, and they will be more than happy to provide you with a copy. Planning partners contact information can be found at <http://www.planning.dot.gov/mpos1.asp>.

### Funding for Tribal Consultation Services

It's not a new question but one where there may finally be a definitive response, "can Tribes be paid for their consultation services?" The answer is a conditional yes. However, like state and Federal regulatory agencies (EPA, USFWS, etc) that are currently funded using transportation dollars, the funding is tied to "beyond customary support" and must provide "meaningful contribution" towards expediting project delivery.

SAFETEA-LU, the newest highway funding bill, allows transportation highway dollars to be spent on services that are to be provided by other agencies, including Federally Recognized Tribes, but only when the aforementioned conditions apply. In sum, the services must be tied to expediting the delivery of specific projects and memorialized in a specific annual Memorandum of Agreement (MOA), which would spell out the terms and commitments of the funded position. Based on these limitations, the Pennsylvania Division Office does not anticipate funding Tribes for the normal, base-line support they are currently providing unless there is a particular project or program initiative that would require specialized services.

## Announcements

The seventh annual **Byways to the Past** conference on transportation and historic preservation will be held May 17-18, 2006 in Indiana, PA. A highlight of the conference will be a roundtable discussion with several Native American Tribe representatives who will also give presentations on their Tribe's history in Pennsylvania. For more information and to register for the conference visit [www.pennbyways.net](http://www.pennbyways.net).

The summer meeting of the **Transportation Research Board ADC 50 Committee on Historic and Archaeological Preservation in Transportation** will be held on July 23-26, 2006 in Williamsburg, VA. Visit the committee's website at [www.itre.ncsu.edu/ADC50/index.htm](http://www.itre.ncsu.edu/ADC50/index.htm) in the near future for more information.

FHWA and PENNDOT would like to introduce the new consultant working on tribal consultation and the newsletter. His name is Michael Stanilla. Mr. Stanilla is an archaeologist with ASC Group, Inc. His number at PENNDOT is 717-214-8713 and email is [c-mstanill@state.pa.us](mailto:c-mstanill@state.pa.us).

The **Annual TRB Meeting** was held on January 22-26, 2006 in Washington D.C. Visit [www.trb.org](http://www.trb.org) for highlights.

The **Advisory Council on Historic Preservation** : Native American Program is also offering training courses. They can be contacted directly for dates and locations. Valerie Hauser, Coordinator (202) 606-8530 [vhauser@achp.gov](mailto:vhauser@achp.gov)

The **Tribal Consultation Website** is up and running at <http://www.penndotcrn.org>. This page contains a brief description of the consultation process, helpful publications, a list of tribal websites, and miscellaneous useful links. Once again, comments, criticisms, and suggestions are welcomed. New links, information, or corrections would be particularly useful. Please address any concerns to Joe Baker at [josebaker@state.pa.us](mailto:josebaker@state.pa.us).

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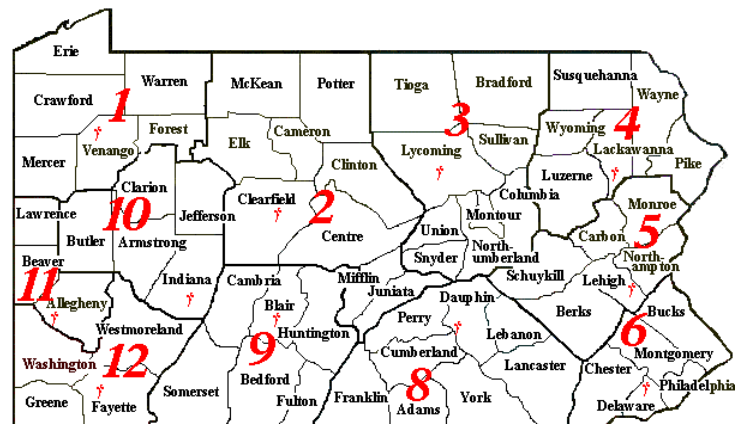
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Is there a topic or a story you would like to include in the next issue of this newsletter? Please contact:

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