

# Programmatic Agreement for Minor Transportation Projects

1998 Annual Report

DRAFT

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Pennsylvania Department of Transportation

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For the:

Federal Highway Administration, Pennsylvania Division

Pennsylvania State Historic Preservation Officer

Advisory Council on Historic Preservation

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## Executive Summary

On December 17, 1996, the Pennsylvania Department of Transportation (PennDOT) through the Federal Highway Administration (FHWA), the Pennsylvania State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) executed the Programmatic Agreement for Minor Transportation Projects (Agreement). The purpose of the Agreement is to streamline consultation under Section 106 of the National Historic Preservation Act and to delegate certain decision making responsibilities to PennDOT.

Under the terms of the Agreement, PennDOT is required to prepare an annual report on projects reviewed under the Agreement for submission to the FHWA, SHPO and ACHP. This document summarizes activities for calendar year 1998. During 1998, a total of 312 minor projects were exempted from further review under Stipulation C of the Agreement. PennDOT Qualified Professionals reviewed an additional 115 Federal-Aid projects under Stipulation D for either No Effect or No Adverse effect (58 more 100% state funded projects were similarly reviewed). The SHPO raised three objections to Stipulation D findings, all of which were resolved in a timely manner.

An annual report for calendar year 1997 was prepared by PennDOT and submitted to the ACHP, FHWA, SHPO, and the Pennsylvania Archaeological Council (PAC) in October of 1998. A review meeting was held with all parties on December 7, 1998 to discuss the results presented in the report and to consider proposed changes to the Agreement. There was general consensus among the attendees that in its first year of implementation the Programmatic Agreement was working well.

The results from the second year continue to support the utility of the Agreement for both streamlining the Section 106 process for minor projects and improving decision making by having Qualified Professionals view projects in the field. The Agreement has allowed PennDOT to achieve these results without compromising historic resources. Recommendations for further improvements are presented.

## **I. Introduction**

The FHWA has developed, in consultation with the Advisory Council on Historic Preservation, the SHPO, and PennDOT a Programmatic Agreement for Minor Transportation Projects (Appendix A). The purpose of the Agreement is to streamline the Section 106 process for certain types of minor transportation projects and to delegate greater responsibility to FHWA and PennDOT by reducing coordination with the the SHPO and ACHP.

### **A. Applicability**

This Agreement applies to Federal-Aid projects that are classified as Categorical Exclusions (Class II) under the National Environmental Policy Act (See 23 CFR 771). Projects which are classified as an Environmental Impact Statement (Class I) or an Environmental Assessment (Class III) may not be reviewed under the Agreement. FHWA has also chosen not to include Categorical Exclusions that originally were scoped as an Environmental Assessment, but were later downscoped. Projects which will have an Adverse Effect on historic resources or have public controversy on historic preservation issues can not be reviewed under the Agreement. In addition, projects affecting a National Historic Landmark or National Historic Park will not be reviewed under the Agreement.

The Agreement does not cover State-funded projects nor projects that are covered under Section 106 through a USCOE 404 Permit. It should be noted that under an informal agreement with the Pennsylvania Historical and Museum Commission, 100% State-funded projects that meet all the requirements of Federal-Aid projects can utilize the same process as outlined in the Agreement. Although FHWA is not responsible for the decisions made by PennDOT on State-funded projects, the data from these projects have been included in this report as a measure of the performance of the Agreement.

The Agreement establishes two general levels of review. Stipulation C projects are the least likely to have effects on historic resources and can be evaluated in the PennDOT Districts by staff who have had basic Cultural Resource training. Stipulation D projects have greater potential to effect historic resources and must be evaluated by Cultural Resource Professionals who meet the qualification standards published in 36 CFR 61. Under Stipulation D the Qualified Professional may review projects within PennDOT

- a. if there is No Resource or No Effect, with notification sent to the SHPO; or
- b. with as needed consultation with the SHPO if there is No Adverse Effect.

### **B. Purpose of the Report**

Under Stipulation H.3 of the Agreement, PennDOT shall prepare an annual report for the calendar year. The report shall be submitted on or before April 15<sup>th</sup> of the following year, and FHWA will ensure the report is made available for public inspection and comment.

Based on the annual report and the comments received, the Agreement may be amended, utilizing Stipulation L.1 or L.2.

### C. Organization of the Report

The report presents a summary of the projects reviewed under Stipulations C and D of the Agreement. Section II includes tabulations of Stipulation C exemptions and Stipulation D findings. A list of projects reviewed during 1998 is presented in Appendices B and C.

Section III discusses objections made by the SHPO to specific project findings and how the objections were resolved.

PennDOT's training efforts relative to the Agreement are described in Section IV.

Section V reports on FHWA process reviews and Section VI makes recommendations for improvements to the operation of the Agreement.

## II. Summary of Projects and Activities Covered by the Agreement

Project reviews under the Programmatic Agreement are made under one of three categories: Stipulation C determinations that a project is exempt from further review; Stipulation D.2 findings that a project would have either no historic resources or no effect on historic resources; or, Stipulation D.3 findings that a project would have no adverse effect on historic resources.

### A. Stipulation C

Stipulation C determinations include those covered under Stipulation C.1 and C.2, the difference being the nature and complexity of the project. District Designees are authorized to make exemptions under Stipulation C.1 and C.2, but are also mandated to exercise good judgement. Projects that could technically be covered under Stipulation C.1 or C.2, but that potentially could affect cultural resources were referred to a qualified professional, who would consider the project under Stipulation D.

A total of 312 Stipulation C exemptions were made by District Designees during 1998. A list of these projects is found in Appendix B. Table 1 provides a quarterly tabulation of the exemptions made by each District. These numbers include both Federal-Aid and 100% state funded projects. In their quarterly reporting, District Designees made no distinction in funding source. Since the Agreement technically covers only Federal-Aid projects, categorizing projects according to funding type may be something to consider in future reporting.

**Table 1. Stipulation C Exemptions**

District	1 <sup>st</sup> Quarter Jan-Mar	2 <sup>nd</sup> Quarter Apr-Jun	3 <sup>rd</sup> Quarter Jul-Sep	4 <sup>th</sup> Quarter Oct-Dec	Total
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1-0	5	1	0	2	8
2-0	2	2	5	5	14
3-0	17	21	13	10	61
4-0	23	12	22	4	61
5-0	10	4	1	2	17
6-0	2	12	0	0	14
8-0	11	7	9	3	30
9-0	1	0	2	0	3
10-0	4	9	25	14	52
11-0	13	17	1	10	41
12-0	2	2	2	5	11
Totals	90	87	80	55	312

The variation among Engineering Districts reflects, in part, the size of each District's program, the number of state funded projects included in the total, the number of maintenance projects included in the total, and the Districts' use of other forms of consultation under Section 106 and the Pennsylvania State History Code. Use of the Agreement is voluntary and some Districts have chosen to rely more on previously established forms of consultation (e.g. Preliminary Cultural Resource Review Form).

#### B. Stipulation D

Stipulation D findings are made by PennDOT cultural resource professionals who meet the Federal qualification standards under 36 CFR 61. Findings can either be D.2 - No Historic Properties Present or Affected, or D.3 - No Adverse Effect. At a minimum, a finding can be made based on information obtained from background research and a fieldview. Additional field studies can be recommended that could include Phase I and Phase II Archaeological

surveys, Historic Resource Identification and Evaluation surveys, and Criteria of Effect evaluations. As long as the studies did not result in a finding of adverse effect, the project could remain within the Agreement.

A total of 115 Stipulation D findings were made during 1998 (Table 2) for Federal-Aid projects. 105 of these were findings of No Historic Property Present or Affected (D.2) and 10 were findings of No Adverse Effect (D.3). Of the total number of projects reviewed under Stipulation D, the SHPO objected to three of the findings, one under D.2 and two under D.3 (See Section III).

An additional 58 Stipulation D findings were made for state funded projects that are not directly covered under the agreement. Fifty-three of these were D.2 findings and 5 were D.3 findings. PennDOT received no objections on any of the submissions for state funded projects.

A list of projects reviewed under Stipulation D is found in Appendix C.

**Table 2. Stipulation D Findings**

District	Funding	Stipulation D.2	Stipulation D.3	Total	SHPO Objections
1-0	Federal	11	0	11	0
	State	24	0	24	0
2-0	Federal	8	1	9	0
	State	9	1	10	0
3-0	Federal	6	3	9	1
	State	2	2	4	0
4-0	Federal	12	1	13	0
	State	1	0	1	0
5-0	Federal	14	0	14	1
	State	4	0	4	0

6-0	Federal	10	3	13	1
	State	0	1	1	0
8-0	Federal	3	0	3	0
	State	1	0	1	0
9-0	Federal	1	0	1	0
	State	1	0	1	0
10-0	Federal	15	1	16	0
	State	1	1	2	0
11-0	Federal	22	0	22	0
	State	9	0	9	0
12-0	Federal	3	1	4	0
	State	1	0	1	0
Totals	Federal	105	10	115	3
	State	53	5	58	0
	Total	158	15	173	3

### III. Objections to Findings

During calendar year 1998 three (3) objections were made by the SHPO on the 158 Stipulation D.2 (No Resource/No Effect) and D.3 (No Adverse Effect) findings provided by PennDOT for Federal-Aid projects. No objections were received on 100% state-funded projects. Table 3 provides a summary of the objections. After meeting with the SHPO to resolve the objections,

PennDOT's original findings were supported in two cases and in the third, the finding was changed on the basis of new information.

**Table 3. Stipulation D Objections**

Project	ER Number	Finding	Date of Finding	Reason for Objection	Outcome	Date Resolved
Schuylkill County SR 9900, Sec. BR  CO Bridge #112 Replacement	98-6011-107	D.2	4/3/98	Disagreement on eligibility of bridge	Additional Information resulted in PennDOT agreeing with SHPO that bridge is eligible. Project removed from Agreement because of Adverse Effect	6/17/98
Tioga County SR 4041, Sec.001  Bridge over Cowanesque River Rehabilitation	98-6128-117	D.3	9/3/98	Replacement of steel railing with concrete parapets did not meet Secretary of Interior Standards	PennDOT proposed an alternative treatment that meets the Secretary's Standards.	10/13/98
Montgomery County SR 1019, Sec. 81S  Spring Mount Rd Bridge Replacement	94-1719-091	D.3	11/3/98	SHPO felt not all options were considered in choosing form liners & weathered guiderail for replacement of non-eligible bridge. Requested landscaping plan and assurance that design plan would be carried through as proposed for eligible Groff's Mill property	PennDOT presented plans and assurances that project would be monitored during construction. SHPO agreed with finding of No Adverse Effect.	12/15/98

On the Schuylkill County Bridge #112 bridge replacement project, PennDOT submitted a finding of No Historic Properties Present or Affected on the basis that the bridge was not eligible for the National Register. In reviewing the most recent information available on the state's comprehensive historic bridge survey currently in progress, PennDOT's reviewer was led to believe that the bridge had lost integrity due to structural weaknesses altering its functioning as a truss bridge. It was the opinion of the SHPO that the bridge was eligible under Criterion C "as an early and good example of its type." The consultant involved in the bridge survey, A. G. Lichtenstein, indicated that the bridge was potentially eligible and merited further evaluation. After a fieldview of the bridge the consultant found the bridge to be an excellent example of its type in unaltered condition and recommended eligibility based on its technological significance. With this additional information, PennDOT withdrew its original finding and removed the project from the Programmatic Agreement since the project was expected to have an Adverse Effect.

A bridge rehabilitation project in Tioga County on SR 4041, Section 001 was submitted by PennDOT as a No Adverse Effect finding. Part of the rehabilitation of the National Register eligible Cowanesque River Bridge included replacement of steel railings with concrete parapets. The SHPO felt that this constituted the "removal of character defining features of the bridge...{and} may have an adverse effect on the design of this historic bridge." PennDOT proposed an alternative barrier treatment that would use a fourteen inch concrete barrier curb as part of the concrete deck's replacement rather than parapets. This would allow the existing steel railing and portal knee braces to be retained. It was agreed by PennDOT and the SHPO that this alternative treatment would conform to the Secretary of the Interior's Standards for Rehabilitation and that the project would have no adverse effect upon the bridge.

The final objection was on the Spring Mount Road bridge replacement project in Montgomery County, SR 1019, Section 81S. While the bridge itself is not eligible for the National Register, Groff's Mill is an eligible property within the area of potential effect. PennDOT proposed to use bridge form liners and weathering steel guiderail to be compatible with the setting of the mill and submitted a finding of No Adverse Effect. The SHPO objected on the basis that other options for the bridge may not have been considered, and that a landscaping plan and plan for monitoring the results was needed. After meeting with the SHPO and presenting the bridge, landscaping and monitoring plans, both SHPO and PennDOT agreed that the project would have No Adverse Effect.

#### **IV. Training**

Under Stipulation B.4 of the Agreement, PennDOT and the SHPO are to provide annual training to District Designees who would be making exemptions under Stipulation C of the Agreement. In addition each Designee was to have completed National Highway Institute (NHI) Course 14211(or an equivalent), Historic and Archaeological Preservation. The purpose of this training is to sensitize Designees to situations where Stipulation C exemptions would or would not be appropriate.

No formal training for District Designees was held in 1998. A short overview of the Agreement was presented in District 8-0 for new project managers unfamiliar with the Agreement, however most of the training was on an informal basis. The dialogues between the Qualified Professionals and the Engineers and Environmental Managers during Stipulation D fieldviews provided an informal type of training.

Annual training was not held for District Designees for several reasons. Two training sessions had been conducted in 1997, the first year of operation under the Agreement. The most recent training was in November of 1997. By the end of the second training session, every District had one or more persons qualified as Designees. Secondly, the wording in the Agreement suggested that the same training would be given to Designees on an annual basis. PennDOT wished to propose a two-tier training whereby new Designees would receive the basic training specified in Appendix B of the Agreement, and the annual training would change every year for existing Designees. PennDOT also wanted to incorporate into the annual training the results of the 1997 annual review and any changes to the Programmatic Agreement agreed to by the signatories. The annual report was submitted in October of 1998 and the annual review meeting was held in December. A training session is planned for 1999.

Training for new Qualified Professionals in the use of Stipulation D of the Agreement was accomplished through an internship type of arrangement. The trainee worked for about 2-3 months with a qualified professional knowledgeable in the use of the Agreement. Three new Qualified Professionals were trained in 1998.

## **V. FHWA Process Reviews**

FHWA did not conduct process reviews of the Agreement in 1998.

## **VI. Conclusions and Recommendations**

In its second year of operation, 485 projects were reviewed under the Programmatic Agreement for Minor Transportation Projects. Of these, 312 were exemptions under Stipulation C, and 173 (115 Federal-Aid and 58 state-funded) were reviewed by a Qualified Professional under Stipulation D. Three objections to Stipulation D findings were made by the SHPO.

At the annual review meeting for calendar year 1997 it was agreed that the Programmatic Agreement was successful. The results for 1998 would continue to support that conclusion. Although FHWA did not conduct any process reviews, one measure of success is in the number of objections made by the SHPO. The goal is for PennDOT to make responsible decisions that the SHPO feels comfortable with. Three objections out of a total of 173 Stipulation D findings is an acceptance rate of 98%. After meeting with the SHPO to discuss these objections, in only one case was PennDOT's original finding changed. Over the past year PennDOT and SHPO staff have become more familiar with the Agreement and its operating procedures, resulting in less questions and confusion.

The following recommendations are made for improvements to the operation of the Agreement.

- a. PennDOT needs to provide more training to its Districts and consultants.  
PennDOT has been undergoing a change in its business practices whereby projects are being developed using a team approach. The result has been an increase in the number of new project managers in the Districts many of whom are not familiar with the Programmatic Agreement and how it operates. There is still variability in the extent to which Districts are using the Agreement, and while this may be due to a number of factors, the goal is to ensure that this difference is not due to a lack of training.

Each District now has at least one Designee qualified to make exemptions under Stipulation C. It is recommended that there be a minimum of two Designees within each District who have had the basic training specified in Appendix B of the Agreement. More training is planned for 1999.

PennDOT's consultants also need to become more familiar with how the Programmatic Agreement operates. No formal training for consultants has been held to date and there has been some confusion in communicating to consultants the decisions made by the Qualified Professional regarding which portions of a project's Area of Potential Effect may or may not

need additional studies and how the decisions made by the Qualified Professional are to be documented in the consultants' reports. A one day training session for consultants is recommended.

- b. The Programmatic Agreement should be amended to include the changes that were agreed to by the ACHP, FHWA, SHPO, PAC and PennDOT at the December 7, 1998 annual review meeting (these are documented in the final draft of the 1997 Annual Report).
- c. PennDOT Districts need to prepare and submit Stipulation C quarterly reports in a timely manner. Stipulation C.4 of the Agreement requires that each District submit a list of Stipulation C exemptions to the SHPO and the Bureau of Environmental Quality (BEQ) on a quarterly basis. While many Districts have been submitting quarterly reports on time, several Districts have been late in making these submissions. This has resulted in a delay in BEQ's preparation and submission of the annual report, which the Agreement specifies should be completed by April 15.

## Appendix A

### Executed Programmatic Agreement for Minor Transportation Projects

## Appendix B

### Stipulation C Project List

## Appendix C

### Stipulation D Project List