

MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
MAINE DEPARTMENT OF TRANSPORTATION,
AND MAINE STATE HISTORIC PRESERVATION OFFICER
REGARDING MAINEDOT WIN 17712.00
BLUE HILL FALLS BRIDGE #5038 REPLACEMENT
HANCOCK COUNTY, MAINE

[DRAFT]

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Blue Hill Falls Bridge #5038 Replacement Project (undertaking) in Blue Hill, Maine, pursuant to the National Historic Preservation Act of 1966, 54 U.S.C. 306101 et seq; and

WHEREAS, the FHWA is the "Agency Official" responsible for ensuring that the undertaking complies with Section 106 of the National Historic Preservation Act (NHPA) ((54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004);

WHEREAS, the MaineDOT proposes to design and construct the undertaking and has been delegated responsibilities by the FHWA; and

WHEREAS, the undertaking consists of replacing the Blue Hill Falls Bridge #5038 with an enhanced girder bridge; and

WHEREAS, the FHWA has defined the undertaking's area of potential effects (APE) as displayed in Attachment A; and

WHEREAS, the FHWA has determined that the undertaking has an adverse effect on Blue Hill Falls Historic District, which is eligible for listing in the National Register of Historic Places under Criteria A & C and includes the following contributing resources: Blue Hill Falls Bridge #5038, which is eligible under Criteria C; and Wakonda, which is eligible under Criteria A & C. The FHWA has also determined that the undertaking has an adverse effect on the following archaeological resources: the John Roundy House Site and the Luskey Site, both of which are

eligible for listing in the National Register of Historic Places under Criteria D; and

WHEREAS, the FHWA has consulted with the Maine SHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the FHWA has ensured that the local significance of all National Register-eligible resources will be captured in compensatory mitigation; and

WHEREAS, the FHWA has consulted with the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation of the proposed action in accordance with 36 CFR Section 800.3 (f)(2). Letters were sent to the tribes on December 8, 2010, in accordance with their preferred method of receiving information from the Department of Transportation. The Penobscot Nation and Passamaquoddy Tribe requested and received consulting party status; and

WHEREAS, in accordance with 36 CFR 800.2(c), the FHWA has requested input from consulting parties in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. The following parties requested and received consulting party status: James Schatz, Blue Hill Selectman; Anna Roelofs, President of Blue Hill Historical Society; Ann Luskey, Blue Hill resident; Chris Sockalexis, Tribal Historic Preservation Office of the Penobscot Nation; and Donald Soctomah, Tribal Historic Preservation Officer of the Passamaquoddy Tribe; and

WHEREAS, in accordance with 36 CFR 800.2(d), the FHWA has requested input from the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the FHWA has notified the ACHP of the potential for an adverse effect determination. The FHWA has invited the ACHP to consult on November 8, 2019, and the ACHP has chosen to not participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii) on November 19, 2019; and

WHEREAS, in accordance with 36 CFR Section 800.6(c)(2), the FHWA has invited the MaineDOT to be an invited signatory and in accordance with 36 CFR Section 800.6(c)(3);

NOW, THEREFORE, the FHWA and the Maine SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA, with assistance from MaineDOT, shall ensure that the following measures are carried out:

I. Recordation

The Blue Hill Falls Bridge #5038 will be recorded using the “Outline Format” narrative of the Maine Historic Engineering Recordation (MHER) standards.

II. Interpretive Panel

MaineDOT will design and install one permanent outdoor interpretive panel depicting any or all the following topics: the history of the Blue Hill Falls Bridge #5038 and earlier crossings, general interpretation of archaeological resources found in the region, and a general history of settlement in the Blue Hill Bay area. The panel’s content will be prepared by MaineDOT and a 36 CFR 61 qualified architectural historian. The location will be determined prior to installation. The Maine SHPO, town officials, and consulting parties will be provided an opportunity for 30 calendar days to review a draft of the interpretive panel’s content, design, and location.

III. Educational Video

MaineDOT and the FHWA will develop one educational video that details the general history of settlement in the Blue Hill Falls region and archaeological investigations that have taken place in the area. MaineDOT and the FHWA will work with the Maine SHPO’s Archaeological Staff and any interested parties, as appropriate, (including the Penobscot Nation) to develop materials and interviews. MaineDOT and the FHWA will provide electronic copies of the educational video to the Penobscot Nation, the Blue Hill Historical Society, Maine SHPO, and local schools. Electronic download instructions will also be made available on MaineDOT’s website for a period of one year after execution of this MOA for use by academic institutions, educational organizations, and other interested parties.

IV. Archaeological Data Recovery Plan

Data recovery for archeological resources will be carried out in accordance with the Maine Historic Preservation Commission’s *Blue Hill Falls Bridge Replacement Archaeological Mitigation and Data Recovery Plan*.

V. Duration

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation IX.

VI. Post-Review Discoveries

If potential historic properties are discovered or unanticipated effects on historic properties found, the FHWA shall consult in accordance with 36 CFR Section 800.6(c)(6). If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, MaineDOT shall suspend work in the area of the discovery in accordance with

Maine Department of Transportation Standard Specification 105.9: *Historic and Archaeological Considerations* and DOT shall immediately notify the FHWA. In compliance with 36 CFR §800.13, the FHWA shall notify within 24 hours the ACHP, the Maine SHPO, and, if applicable, federally recognized tribal organizations that attach religious and/or cultural significance to the affected property. The Maine SHPO, the FHWA, MaineDOT, and Tribal representatives, as appropriate, may conduct a joint field review within 72 hours of the notification to the FHWA. The FHWA, in consultation with the appropriate parties, will determine an appropriate treatment of the discovery prior to the resumption of construction activities in the area of the discovery.

VII. Discovery of Human Remains

MaineDOT shall ensure that any human remains and/or grave-associated artifacts encountered during the archaeological investigations are brought to the immediate attention of the FHWA, the Maine SHPO, and any federally recognized Tribes that may attach religious and/or cultural significance to the affected property. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until the FHWA, in consultation with the appropriate parties, has developed a treatment plan that considers the comments of the appropriate parties. All procedures will follow the guidance outlined in the National Park Service Publication *National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places*, taking into account the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). If Native American cultural materials are encountered during the course of the project, MaineDOT will abide by the Maine Department of Transportation Standard Specification 105.9: *Historic and Archaeological Considerations* by stopping all activities in the area of discovery and notifying the FHWA, Maine Historic Preservation Commission (MHPC), Advisory ACHP on Historic Preservation (ACHP), the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation. Stipulation III of this agreement will be followed; and

VIII. Reporting

Each year following the execution of this agreement until it expires or is terminated, MaineDOT shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in MaineDOT's efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA; and

IX. Dispute Resolution

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FHWA shall consult with the objecting party(ies) to resolve the objection. If the FHWA determines, within 30 days, that such objection(s) cannot be resolved, the FHWA will:

A. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate documentation, the ACHP shall review and advise the FHWA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the MOA, will be taken into account by the FHWA in reaching a final decision regarding the dispute.

B. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the FHWA may render a decision regarding the dispute. In reaching its decision, the FHWA will take into account all comments regarding the dispute from the parties to the MOA.

C. The FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The FHWA's decision will be final.

X. Resolving Public Objections

At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify the FHWA. The FHWA shall:

- A. Immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to the FHWA.
- B. Establish a reasonable time frame for this comment period. The FHWA shall consider the objection, and in reaching its decision, the FHWA will take all comments from the other parties into account.
- C. Within 15 days following closure of the comment period, the FHWA will render a decision regarding the objection and respond to the objecting party. The FHWA will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. The FHWA's decision regarding resolution of the objection will be final.
- D. Following the issuance of its final decision, the FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision. Nothing in this paragraph creates additional legal rights or responsibilities on the FHWA that are not already afforded under the NHPA.
- E. The FHWA's responsibility to carry out all other actions or terms of this MOA that are not the subject of the objection remain unchanged and may proceed.

XI. Amendments

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR

§§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories, including any invited signatory, cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation XII.

XII. Termination

If the MOA is not amended following the consultation set out in Stipulation XI it may be terminated by any signatory or invited signatory. Within 30 days following termination, the FHWA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the ACHP under 36 CFR §800.7(a) and proceed accordingly.

XIII. Coordination with Other Federal Reviews

In the event that another federal agency not initially a party to or subject to this MOA receives an application for funding/license/permit for the Undertaking as described in this MOA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this MOA and notifying the FHWA, Maine SHPO, and the ACHP that it intends to do so, and adherence to the terms of this MOA.

SIGNATORIES:

Federal Highway Administration

_____ Date _____
Todd D. Jorgensen
Division Administrator

SIGNATORIES:

Maine State Historic Preservation Officer

_____ Date _____
Kirk Mohney
State Historic Preservation Officer

INVITED SIGNATORY:

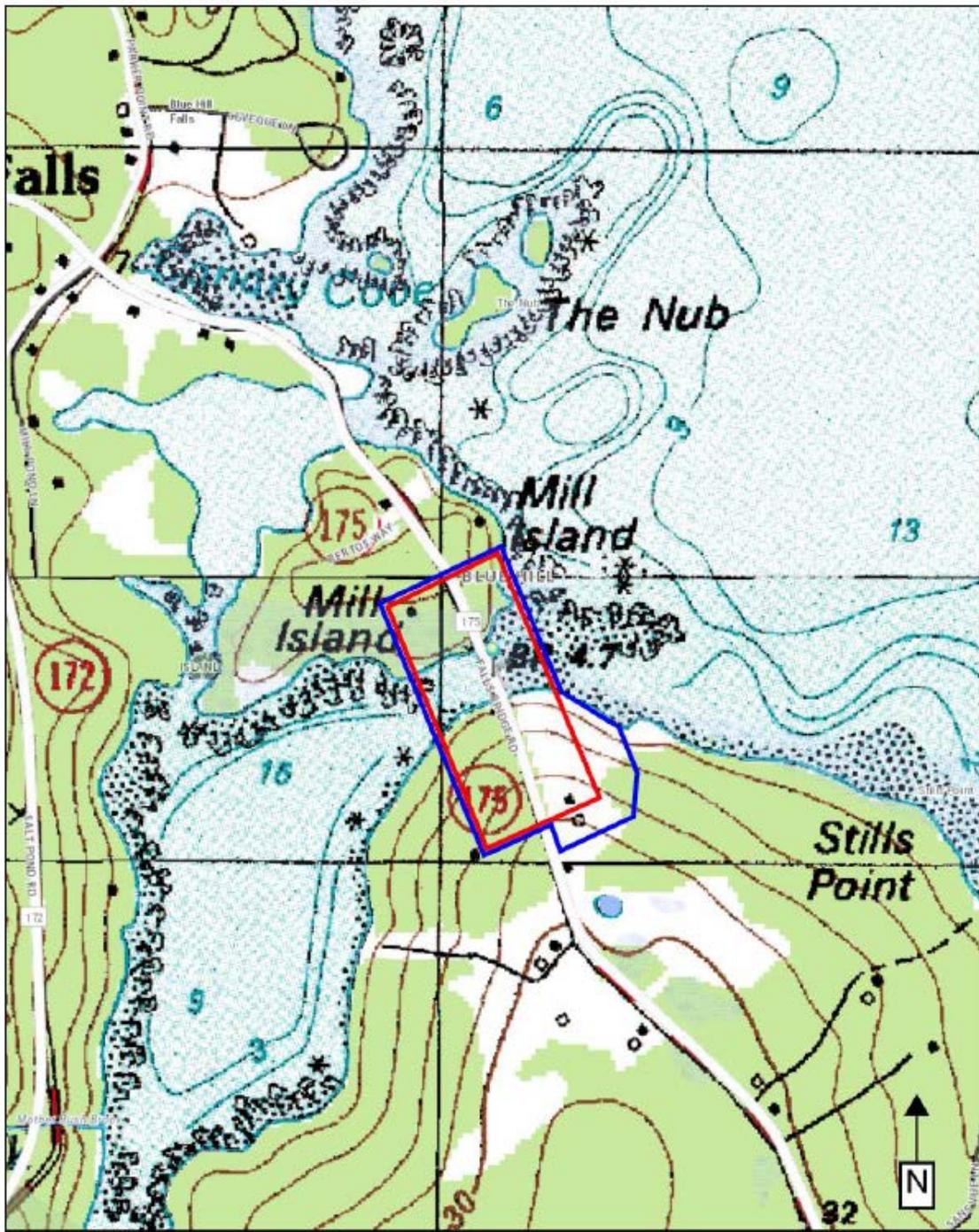
Maine Department of Transportation

_____ Date
Joyce Taylor
Chief Engineer

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ATTACHMENT A

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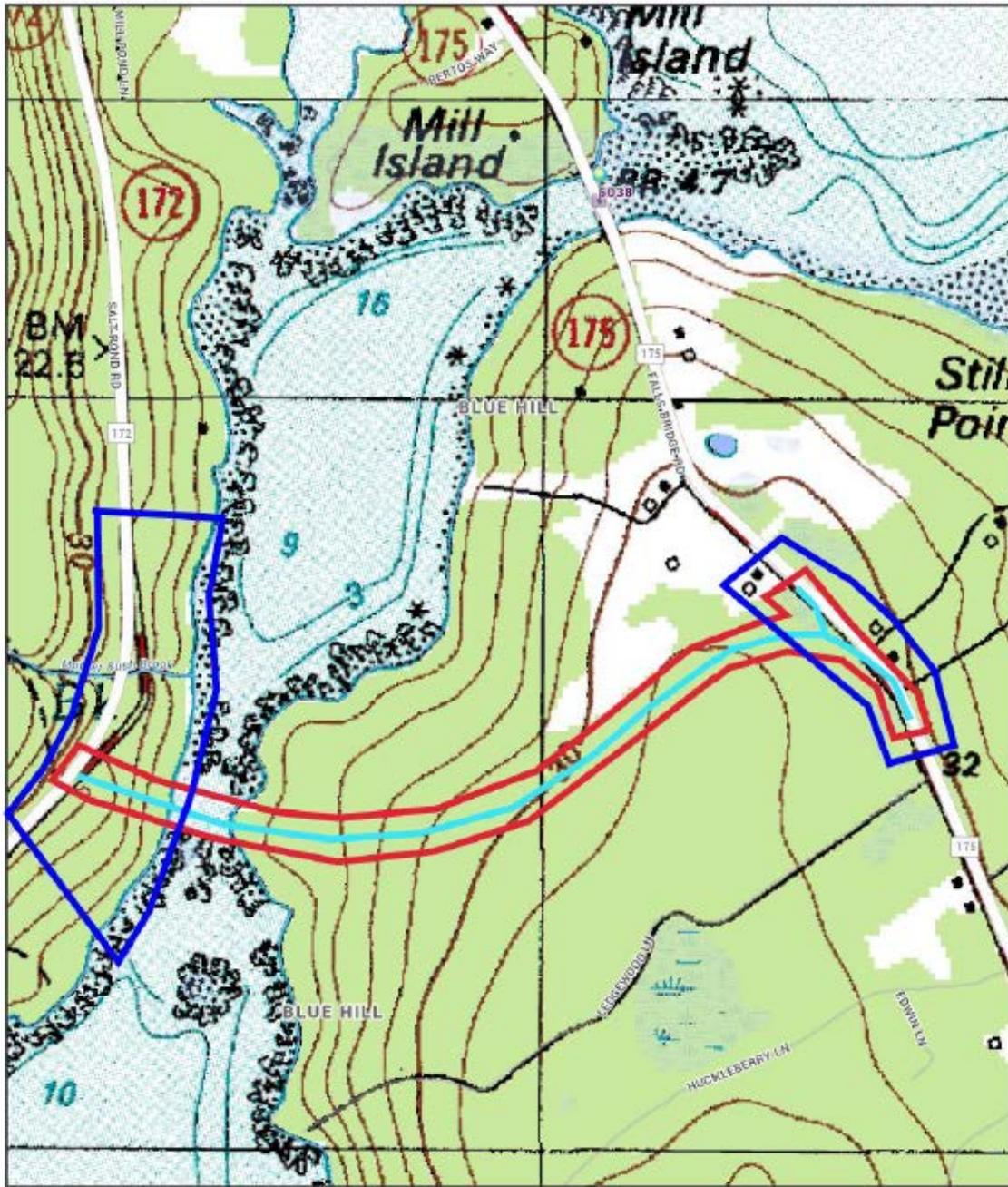


Blue Hill 17712.00
 Blue Hill Falls Bridge #5038
 Bridge Improvements

— APE — Survey Boundary

Scale 1:9000

MAINEDOT WIN 17712.00 ALTERNATE ALIGNMENT



APE 

SURVEY BOUNDARIES 

0.1 Miles
1 inch = 0.15 miles

