

MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
MAINE DEPARTMENT OF TRANSPORTATION,
AND MAINE STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PLEASANT RIVER BRIDGE #3244
REPLACEMENT
PISCATAQUIS COUNTY, MAINE

[DRAFT]

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Pleasant River Bridge Replacement project (undertaking) in Milo, Maine; and

WHEREAS, the undertaking consists of replacing the Pleasant River Bridge #3244 which carries Pleasant Street over the Pleasant River located .09 of a mile west of Pleasant River Road; and

WHEREAS, the FHWA Maine Division Administrator 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)); and

WHEREAS, the Maine Department of Transportation (MaineDOT) has been delegated responsibilities under the November 4, 2004 *Programmatic Agreement Among Federal Highway Administration, Federal Transit Administration, the Advisory Council on Historic Preservation, The Maine State Historic Preservation Officer, and Maine Department of Transportation, Regarding the Implementation of the Federal Aid Highway and Federal Transit Programs in Maine*; and

WHEREAS, FHWA has defined the undertaking's area of potential effect (APE) for the Pleasant River Bridge Replacement project in accordance with 36 CFR Section 800.16(d); and

WHEREAS, FHWA has consulted with the Maine State Historic Preservation Officer (Maine SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA (16 U.S.C. Section 470(f)); and

WHEREAS, FHWA has determined that the undertaking has an adverse effect on the Pleasant River Bridge, which is eligible for listing in the National Register of Historic Places (NRHP) under Criteria C; and

WHEREAS, FHWA has consulted with federally-recognized Indian tribes (Tribes) including the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation on the proposed undertaking in accordance with 36 CFR Section 800.3(f)(2). Emails were sent to the Tribes on November 4, 2015, in accordance with their preferred method of receiving information from the MaineDOT. The Penobscot Nation replied on November 17, 2015, and the Passamaquoddy Tribe replied on November 23, 2015. Both indicated that this undertaking will have no impact on a structure or site of historic, architectural or archaeological significance to their Tribes. Additional information was provided on the preferred alternative on January 30, 2020, via email. The Passamaquoddy Tribe and the Houlton Band of Maliseets responded on January 30, 2020, and indicated that this undertaking will have no impact on a structure or site of historic, architectural or archaeological significance to their Tribes; and

WHEREAS, in accordance with 36 CFR 800.2(d), FHWA has requested input and considered the views of consulting parties and the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. Two public meetings were held on April 11, 2018, and July 23, 2019, to consult with and obtain input from the public. Information on effects to the Pleasant River Bridge was sent to the Town of Milo and posted to the MaineDOT website. A public notice was placed to solicit review and comment regarding effects to the Pleasant River Bridge; and

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

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination. FHWA invited the ACHP to consult and the ACHP **has chosen/has chosen not** to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii) on **Month, Day, 2020**; and

NOW, THEREFORE, the ACHP, 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

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

I. The Pleasant River Bridge #3244 will be recorded using the “Outline Format” narrative of the Maine Historic Engineering Recordation (MHER) recordation standards.

II. 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, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VIII.

III. Post-Review Discoveries

If potential historic properties are discovered or unanticipated effects on historic properties found, 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 J 05. 9: Historic and Archaeological Considerations and DOT shall immediately notify the FHWA. In compliance with 36 CFR §800.13, 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, 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.

IV. 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 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 J 05. 9: Historic and Archaeological Considerations by stopping all activities in the area of discovery and notifying FHWA, Maine SHPO, ACHP, the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation.

V. 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

VI. 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, FHWA shall consult with the objecting party(ies) to resolve the objection. If FHWA determines, within 30 days, that such objection(s) cannot be resolved, 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 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 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, FHWA may render a decision regarding the dispute. In reaching its decision, FHWA will take into account all comments regarding the dispute from the parties to the MOA.
- C. 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. FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. FHWA's decision will be final

VII. 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 FHWA. 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 FHWA.
- B. Establish a 30-day comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account.
- C. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other signatory parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final.
- D. Following the issuance of its final decision, 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. 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.

VIII. 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 IX.

IX. Termination

If the MOA is not amended following the consultation set out in Stipulation VIII it may be terminated by any signatory or invited signatory. Within 30 days following termination, 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.

X. 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.

Execution of this MOA by the FHWA, Maine SHPO, and ACHP and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.