



U.S. Department
of Transportation

**Federal Highway
Administration**

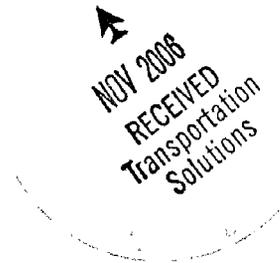
**Delaware Division
(302) 734-5323**

**J. Allen Frear Federal Building
300 South New Street, Suite 2101
Dover, Delaware 19904-6726**

November 2, 2006

Refer to: HDA-DE

Mr. Don L. Klima
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Ave., NW, #809
Washington, DC 20004



Subject: Federal-Aid Project ESTP-N435(2), SR 15 (Choptank Rd.), New Castle Co., DE,
Memorandum of Agreement

Dear Mr. Klima:

Attached for your information, is a copy of the executed Memorandum of Agreement, which has been developed regarding the subject federal-aid project. We are maintaining background documentation in our Office, and any additional information will be made available upon your request.

Sincerely yours,

Robert Kleinburd
Division Program Manager

c.c. Therese Fulmer, DelDOT ✓

MEMORANDUM OF AGREEMENT

AMONG

THE FEDERAL HIGHWAY ADMINISTRATION,

AND THE DELAWARE DEPARTMENT OF TRANSPORTATION,

AND THE DELAWARE STATE HISTORIC PRESERVATION OFFICE

SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING CHOPTANK ROAD SR 15;

N437 – BUNKER HILL ROAD TO N433 – BETHEL CHURCH ROAD

NEAR MIDDLETOWN, NEW CASTLE COUNTY, DELAWARE

DeIDOT - 22-120-01 FHWA - ESTP-N435(2)

WHEREAS, the Federal Highway Administration (FHWA) through the Delaware Department of Transportation (DeIDOT) proposes improvements to Choptank Road between Church Road and Bunker Hill Road. This transportation project is approximately 4.8 miles long. The project will include the reconstruction of the pavement to provide two 11' travel lanes and two 5' shoulders, and the construction of roundabouts and stormwater management facilities; and

WHEREAS, the FHWA has established the undertaking's Area of Potential Effect (APE), as defined in 36 CFR 800.16(d), as those areas within the Limit of Construction (LOC), Temporary Construction Easements (TCE)/Permanent Easements (PE), and/or Right of Way (ROW), and adjacent or contiguous properties where visual effects may occur; and

WHEREAS, the FHWA, pursuant to 36 CFR 800.4(c), has determined that two historic period archaeological sites 7NC-F-94 and 7NC-F-100 are eligible for the National Register of Historic Places and are located within the APE; and

WHEREAS, the FHWA has determined that this undertaking will have an Adverse Effect upon site 7NC-F-94; and

WHEREAS, the FHWA has determined that steps can be taken to avoid the adverse effects to site 7NC-F-100; and

WHEREAS, FHWA has determined that the undertaking will not adversely affect Governor B.T. Biggs (N-5123), Woodside (N-427), Choptank (N-109), W.T. Stoops House (N-N108), S. Holton Farm (N-107), and Rosedale (N-5148), properties that are either listed in or are eligible for the National Register, and are located in the APE; and

WHEREAS, the FHWA has consulted with the Delaware State Historic Preservation Officer (DE SHPO) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C Part 470, and its implementing regulations (36 CFR Part 800) to resolve the adverse affect to 7NC-F-94; and

WHEREAS, the State of Delaware Department of Transportation (DelDOT) participated in the consultation and has been invited to sign this Memorandum of Agreement;

NOW, THEREFORE, the FHWA and the DE 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, and mitigate for the Adverse Effect.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. Historic Archaeological Site 7NC-F-94

A DelDOT shall, in consultation with DE SHPO, develop and implement a treatment plan for Site 7NC-F-94, which will include:

1. Data Recovery:

- a. DelDOT shall have a qualified cultural resource consultant carry out data recovery excavation of that portion of the Site that may be affected by the construction, in accordance with an agreed-upon data recovery plan, as devised under Stipulation I.B of this Agreement;
- b. DelDOT will complete all fieldwork aspects of the data recovery plan prior to commencing construction in the site area. DelDOT will instruct its contractors to at all times conduct their activities within the Limits of Construction. In the event that utility relocation must occur prior to completion of the archaeological fieldwork, DelDOT shall consult with the DE SHPO to ensure the utility installation will not compromise the ability to recover significant data from the site.

2. Public Involvement:

DelDOT, with the assistance of its consultants, will develop and implement a creative public involvement program that may include but is not necessarily limited to:

- a. written description of interesting work for the Archeological Society of Delaware's Inksherd, local newspapers, and Society for Historical Archeology; and
- b. on-site public tour(s) during the data recovery effort; and

- c. public education brochure about the site for distribution to the general public and for placement on DelDOT's web site; and
 - d. final product(s) in PDF format for placement on DelDOT's web site.
- B. DelDOT shall ensure that the data recovery plan meets the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and the DE SHPO's Guidelines for Architectural and Archaeological Surveys in Delaware, and will take into account the Council's guidance Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites, May 18, 1999. The data recovery plan shall include, but is not necessarily limited to, a research design that stipulates objectives, methods, and expected results, production of draft and final reports, and preparation of materials for curation, in accordance with Stipulation I.D. of this Agreement. The DE SHPO will have 30 days to review and comment on proposed data recovery plans. DelDOT shall take into account any comments provided by the DE SHPO.
 - C. DelDOT shall provide all draft and final archaeological reports and public information materials to the DE SHPO for review and comment. All final reports shall meet the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37), and the DE SHPO's Guidelines for Architectural and Archaeological Surveys in Delaware. The final archaeological report will address all phases of survey, as well as the mitigation treatment of the sites.
 - D. DelDOT shall ensure that all records and materials resulting from the archaeological investigations will be curated in accordance with 36 CFR Part 79 and the curation guidelines developed by the Delaware State Museum. These records and materials shall be curated at the Delaware State Museum, or their designee, following the policies of the institution.
 - E. DelDOT shall ensure that all archaeological work carried out pursuant to this MOA is carried out by or under the direct supervision of a person meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards for Archaeologists (48 FR 44738-9)

II. Historic Archaeological Site 7NC-F-100

DelDOT shall take the following steps to avoid adverse effects to Site 7NC-F-100. If DelDOT finds that it cannot implement these steps, and, in consultation with the DE SHPO, determines that the Site will be adversely affected, DelDOT shall develop and implement a treatment plan for Site 7NC-F-100, following the process outlined in Stipulations IA. through I.E. of this Agreement.

- A. DelDOT shall incorporate into its final construction plans a slotted drainage system, to confine the physical disturbance to the area adjacent to the existing road edge, and avoid cutting into the embankment that appears to demarcate the eastern limit of the Site.

- B. DelDOT shall coordinate with the owners and/or developers of the property adjacent to the Site, and shall not permit the owner and/or developer to construct any entrance roads or other such ground-disturbing activities within the Site area within State ROW.
- C. DelDOT shall, in consultation with the DE SHPO, develop and place a covenant and/or other form of legal restriction on that part of the State's ROW containing the Site, requiring consultation with the DE SHPO for any proposed future use of the Site area, in perpetuity.

III. Human Remains

DelDOT shall immediately notify the DE SHPO of the discovery of any human remains encountered during the archaeological investigations or the project construction. DelDOT shall cease all activities that may disturb or damage the remains, and comply with the Delaware Unmarked Human Remains Act (7DE Code Chapter 54). If the human remains are of Native American affiliation, then FHWA will determine an appropriate course of action, in accordance with 36 CFR Part 800, and the above cited Delaware law. The FHWA will include the DE SHPO in such consultation. The DE SHPO will comply with the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) with regard to disposition of the remains and/or associated funerary objects.

IV. Unexpected Discoveries

In the event that previously unidentified archaeological resources are discovered during construction, DelDOT shall instruct the contractor to cease construction in the immediate area, and shall proceed with consultation under 36 CFR Part 800.13 (b)(3).

V. Staging, Stockpiling and Disposal Sites

DelDOT shall consult with the DE SHPO concerning the location of staging and stockpile areas to be used for the project, and locations for disposal of materials produced by demolition, construction, dredging and/excavation. The DE SHPO will review such locations to ensure that the activities will not adversely affect historic properties. DelDOT shall not permit its contractors to use any such locations if the DE SHPO objects.

VI. Review of Project Plans

DelDOT shall provide copies of the semi-final and final project plans to the DE SHPO, and to other consulting parties as may be subsequently identified. Consulting parties will have 30 days from the receipt of all materials to provide comments on the plans. DelDOT shall take into account any comments provided by consulting parties.

VII. Subsequent Changes to the Project

If, subsequent to the implementation of Stipulation VI, DelDOT proposes any changes to the Project affecting location, design, methods of construction, materials, or footprint of the Project, DelDOT shall provide the DE SHPO and other consulting parties with information concerning the proposed changes. The consulting parties will have 30 days from the receipt of this information to comment on the proposed changes. DelDOT shall take into account any consulting party comments, prior to implementing such changes.

VIII. Dispute Resolution

Should any signatory to this Agreement object within 30 days to any plans, specifications or actions proposed pursuant to this agreement, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

- A. Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or
- B. Notify FHWA that it will comment pursuant to 36 CFR 800.7(a) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this agreement that are not the subjects of the objection will remain unchanged.

IX. Duration

Execution of this Memorandum of Agreement shall remain active until the project meets final inspection by DelDOT or its assigned designee. This time period shall not exceed three (3) years from the date of the final signature.

X. Amendments

Any party to this Agreement may propose to FHWA that the Agreement be amended, whereupon FHWA shall consider such an amendment in accordance with 36 CFR Part 800.6(c)(7).

X. Termination

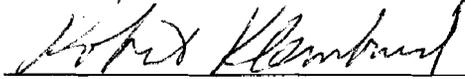
- A. If the FHWA or DelDOT determines that it cannot implement the terms of this MOA, or the DE SHPO determines that the MOA is not being properly implemented, FHWA, DelDOT, or the DE SHPO may propose to the other parties to this MOA that it be terminated.

- B. The party proposing to terminate this MOA shall notify all parties to this MOA, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should all consultation fail, FHWA or the DE SHPO may terminate the MOA by so notifying all parties.
- D. Should this MOA be terminated, FHWA shall either:
 - 1. Consult in accordance with 36 CFR 800.6(a)(1) to develop a new MOA, or
 - 2. Request the comments of the Council pursuant to 36 CFR 800.7(a)(2)

Execution of this Memorandum of Agreement by the FHWA and the DE SHPO, and its subsequent acceptance by the Council, and implementation of its terms is evidence that FHWA has taken into account the effects of the undertaking on historic properties, and has afforded the Council an opportunity to comment on the proposed undertaking and its effect on historic properties.

SIGNATURES:

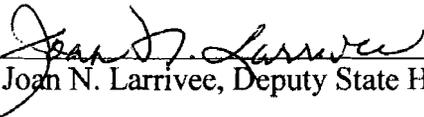
FOR THE FEDERAL HIGHWAY ADMINISTRATION



DATE 11/1/06

John Dewar, Acting Division Administrator, FHWA

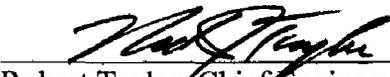
FOR THE DELAWARE STATE HISTORIC PRESERVATION OFFICER



DATE 10/24/06

Joan N. Larrivee, Deputy State Historic Preservation Officer

FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION



DATE 11/1/06

Robert Taylor, Chief Engineer, Delaware Department of Transportation