

**SECTION 106 MEMORANDUM OF AGREEMENT (MOA)**

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE DELAWARE STATE  
HISTORIC PRESERVATION OFFICE, AND THE DELAWARE DEPARTMENT OF  
TRANSPORTATION**

**REGARDING IMPLEMENTATION OF THE U.S. 113 NORTH/SOUTH STUDY -  
ELLENDALE AREA, SUSSEX COUNTY, DELAWARE**

**STATE CONTRACT NUMBER: 22-127-01**

**FEDERAL AID NUMBER: TBD**

WHEREAS, the Federal Highway Administration (FHWA) with the Delaware Department of Transportation (DelDOT) propose to construct approximately seven (7) miles of transportation improvements including, but not limited to, bridge overpasses and grade separated interchanges along U.S. 113 in the Ellendale area of Sussex County, Delaware, hereon referred to as the "Project"; and

WHEREAS, FHWA in consultation with the Delaware State Historic Preservation Office (DE SHPO) and DelDOT has established the Project undertaking's Area of Potential Effect (APE), as defined in 36 CFR Part 800.16(d), as those areas within the Limit of Construction (LOC), Temporary Construction Easements (TCE), Permanent Easements (PE), Right of Way (ROW), and adjacent or contiguous properties where visual effects may occur (**see Attachment A**); and

WHEREAS, FHWA has consulted with the 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 any adverse effects that may occur as a result of this Project undertaking; and

WHEREAS, FHWA has afforded the public an opportunity to comment on the effects of the Project undertaking on historic properties through the National Environmental Policy Act (NEPA) of 1969, as amended, and through DelDOT's Public Involvement Procedures; and

WHEREAS, FHWA has elected to phase the identification and evaluation of historic properties as provided in 36 CFR Part 800.4(b)(2), but will ensure that DelDOT completes the process in a timely manner, to allow practical opportunities to avoid or minimize adverse affects to historic properties, as stipulated under this Memorandum of Agreement (MOA); and

WHEREAS, within the current APE (Attachment A), FHWA and DelDOT have identified and evaluated buildings, structures and districts built in or before 1962; and

WHEREAS, FHWA acknowledges that in the extensive period it will take for DelDOT to complete the Project, additional buildings, structures or districts in the APE will come to meet the minimum fifty (50) year age criterion for historic properties, and FHWA shall address such properties through the process stipulated in this MOA; and

WHEREAS, to date FHWA, pursuant to 36 CFR Part 800.4, has determined that, within the APE, the following properties are listed in or are eligible for inclusion to the National Register of Historic Places:

Teddy's Tavern (Cultural Resource Survey Number S08383);  
The Ellendale State Forest Picnic Facility (S08151); and  
Maringola Produce Stand (S08570); and  
McColley's Chapel (S00150); and  
ECW Camp S-53 Mess Hall (S12179); and

WHEREAS, FHWA, in consultation with the DE SHPO, has applied the criteria of adverse effect to known historic properties; and

WHEREAS, FHWA through DelDOT has determined that the Project will have no effect on:

Maringola Produce Stand (S08570); and

WHEREAS, FHWA, through DelDOT has determined that this Project will have no adverse effect on:

McColley's Chapel (S00150); and  
ECW Camp S-53 Mess Hall (S12179); and

WHEREAS, FHWA, through DelDOT has determined that this project will have an adverse effect on:

Teddy's Tavern (S08383);  
The Ellendale State Forest Picnic Facility (S08151); and

WHEREAS, FHWA has determined that the Project may also affect as yet unidentified historic properties that have not been subject to prior cultural resource investigations, such as areas that are associated with proposed alignment modifications or other Project-related ancillary activities including, but not limited to, stormwater management facilities, wetland mitigation sites, reforestation areas, staging, stockpiling and access areas, and disposal sites, and that the APE may need to be revised to consider such areas; and

WHEREAS, FHWA and DelDOT have notified the Advisory Council on Historic Preservation (ACHP) and the DE SHPO of their intent to use the NEPA process for Section 106 purposes (36 CFR Part 800.8(c)). The ACHP declined to participate in the consultation on June 24, 2010. However, if through the process outlined in this MOA, the signatories find that other historic properties may be adversely affected later in time, coordination with the ACHP may resume; and

WHEREAS, FHWA has contacted the Delaware Nation and the Stockbridge-Muncee Tribe concerning the Project. The Delaware Nation has previously indicated its interest in being a

consulting party to all projects within the State of Delaware, and therefore has been invited to participate in developing this MOA; and

WHEREAS, FHWA and DeIDOT will include the binding commitment made under this MOA in the Environmental Assessment for the Project, in accordance with 36 CFR Part 800.8(c)(4)(i)(B), and

WHEREAS, DeIDOT participated in the consultation, has responsibilities for implementing stipulations under this MOA, and has been invited to be a signatory to this MOA, pursuant to 36 CFR Part 800.6(c)(2); and

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

## **STIPULATIONS**

FHWA shall ensure that the following stipulations are implemented:

### **I. Archaeological Resources**

Within one (1) year of the execution of this MOA and NEPA approval of the selected alternative, DeIDOT shall establish a Plan for funding and scheduling the archaeological program outlined in this Stipulation, to ensure that investigations will be completed in advance of construction or other ground disturbing activities. The Plan shall take into account the projected schedules for right of way acquisition, development of project plans, and construction of the Project. DeIDOT shall provide the FHWA and DE SHPO with a copy of the Plan.

Should DeIDOT acquire any land for the purposes of this Project prior to completing the archaeological program outlined in this Stipulation, DeIDOT's Environmental Studies personnel shall, in consultation with the DE SHPO and FHWA, determine if the parcel(s) have the potential to contain archaeological sites. If so, DeIDOT shall not permit any ground disturbing activities (including but not limited to building demolition, staging, stockpiling, etc.) to occur on the parcel(s) until such time as the necessary surveys or mitigation have been completed.

#### **A. Identification/Evaluation**

Prior to starting construction or other ground disturbing activities, FHWA and DeIDOT, in consultation with the DE SHPO, shall conduct and complete identification level archaeological surveys (Phase I) within the APE for the Project, and will determine if identified sites will require a Phase II level archaeological survey to evaluate their National Register of Historic Places eligibility. Evaluation Studies (Phase II) may require additional background research and/or additional field excavations. All surveys shall conform to the requirements of Stipulation VII. of this MOA.

DelDOT shall prepare reports on findings of the archaeological identification/evaluation surveys and submit the reports to the DE SHPO for review and concurrence. Upon receipt of the document, the review period will be thirty (30) days. FHWA and DelDOT will take into account comments and will recommend any next steps.

During the Evaluation Studies (Phase II), FHWA and DelDOT shall apply the National Register criteria (36 CFR Part 60.4), in accordance with 36 CFR Part 800.4(c), taking into account applicable historic contexts and management plans developed for Delaware's historic and prehistoric archaeological resources.

If FHWA and DelDOT determine that any of the National Register criteria are met, and the DE SHPO agrees, the archaeological site(s) shall be considered eligible for the National Register.

If FHWA and DelDOT determine that the National Register criteria are not met, and the DE SHPO agrees, the archaeological site(s) shall be considered not eligible for the National Register.

Based on the Evaluation Studies (Phase II), should a signatory to this agreement not agree on the eligibility determination of an archaeological site(s), DelDOT and FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR Part 800.4(c)(2), and 36 CFR Part 63.2(c) and 63.3(d).

#### B. Effect Determination/Mitigation

If eligible archaeological sites are identified and affected within the APE, DelDOT will make a reasonable effort to avoid these sites or minimize impacts to them. If the eligible sites cannot be avoided, DelDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5.

If the Project will have an adverse effect on archaeological sites, DelDOT, in consultation with the DE SHPO, shall develop a treatment plan. The treatment plan may include elements of data recovery and/or an alternative mitigation plan.

DelDOT shall submit the treatment plan to the DE SHPO, the Delaware Nation, and other interested or consulting parties that may be identified later in time, for their review and comment. Upon receipt of the document, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments and will recommend any next steps.

Should data recovery investigations be warranted, DelDOT and FHWA shall ensure that a data recovery plan is developed in consultation with the DE SHPO, and other consulting parties or interested parties. The plan shall specify, at a minimum:

- the property, properties, or portions of properties where data recovery is to be carried out, and any property that will or may be destroyed without data recovery;
- research questions to be addressed through data recovery, with an explanation of their relevance and importance;

- the research methods to be used, with an explanation of their relevance to the research questions;
- the methods to be used in analysis, data management, and data dissemination, including a schedule;
- a provision for assessing materials that may be in need of conservation;
- proposed disposition of recovered materials and records;
- proposed methods for involving the interested public in the data recovery, and for disseminating the results of the work to the interested public;
- a proposed schedule for the submission of progress reports to the DE SHPO; and
- provisions to meet on-site in order to evaluate the success of the initial fieldwork phase of any data recovery program, and again near the end of the fieldwork efforts to validate substantial completion.

When or if an alternative mitigation strategy is chosen and approved by the DE SHPO, FHWA, and DelDOT, it may include but is not limited to: analysis and synthesis of past data accumulated through the DE SHPO, FHWA, and DelDOT projects, update of the relevant DE SHPO and DelDOT cultural resource-related websites and GIS databases; development of historic and prehistoric contexts and preservation priorities; statewide predictive models; development of travel or informational displays with the cultural resource work for this Project; oral histories or documentaries related to the project APE and vicinity; virtual tour/website about the archaeological sites being mitigated in the APE; and improved archaeological data management and access for both DE SHPO and DelDOT.

DelDOT will complete all necessary data recovery fieldwork prior to commencing construction in the site areas. Alternative mitigation may or may not be completed prior to commencing construction in the site areas.

DelDOT shall provide all draft and final archaeological reports and public information materials to the DE SHPO for their review and comment. DelDOT shall also provide all such reports and materials that pertain to Native American archaeological sites to the Delaware Nation for their review and comment. DelDOT will take into account any comments received. All final reports shall meet the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37), while also satisfying the necessary DE SHPO's guidelines for archaeological surveys or investigations.

### C. Public Involvement

If mitigation is necessary, DelDOT will prepare a public participation plan and public information materials. DelDOT shall submit the proposed action plan(s) with any materials to FHWA, DE SHPO, the Delaware Nation, and other consulting or interested parties that may be identified for their review and comment. Upon receipt of the materials, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments received, and will recommend any next steps, if necessary, to the FHWA, DE SHPO and the Delaware Nation.

The public participation plan may include, but is not limited to archaeological site tours for the public and educational groups. The specific public outreach materials produced will be determined individually for each site for which mitigation is necessary and may include, but are not limited to pamphlets, videos, historical markers, brochures, websites, exhibits, displays for public buildings booklets on the history or prehistory of the Project area, lectures or presentations at academic conferences, and/or public institutions such as schools and historical societies.

DelDOT shall distribute the public information materials to other consulting parties, interested parties, local schools, historical societies, libraries, museums and/or other venues and individuals deemed pertinent in consultation with the DE SHPO, FHWA and the Delaware Nation.

D. Registration of Site(s)

After completion of the data recovery effort, DelDOT shall, in consultation with the DE SHPO, and other interested parties, as deemed appropriate by FHWA, reevaluate the site(s) to determine if it has yielded and/or may still yield information important in the prehistory or history of Delaware. If DelDOT and the DE SHPO agree that the site(s) still meets the Criteria for Eligibility to the National Register of Historic Places, then DelDOT shall prepare (or instruct its qualified cultural resource consultant to prepare) a Determination of Eligibility form for possible use as a formal nomination to the National Register of Historic Places for the remaining areas of the site(s), and submit it to the DE SHPO for review and further revision, as necessary.

E. Curation

DelDOT shall ensure that all records and materials resulting from the archaeological investigations will be processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division of Historical and Cultural Affairs (DHCA) "*Guidelines for the Curation of Archaeological Collections*" (2001).

These records and materials shall be curated at the DHCA, or its designee, following the policies of the institution, except as may be provided for under the following paragraph.

As part of the Public Involvement efforts outlined in Stipulation I.C. of this Agreement, FHWA, DelDOT and DE SHPO will consult to determine if any archaeological materials may be loaned to a public museum or other public institution for the purposes of exhibit or research, following the Division's loan policy and procedures. Such loans and exhibits may occur only after the curatorial procedures, referenced in the first paragraph in this stipulation, have been completed. As deemed appropriate by FHWA, DelDOT, and the DE SHPO, the Delaware Nation and other consulting or interested parties identified later in time will be consulted concerning curation and any public exhibition of artifacts.

F. Discovery of and Treatment of Human Remains and Burials

DelDOT Environmental Studies and/or appropriate DelDOT construction engineering staff shall immediately (within 24 hours) notify the DE SHPO and FHWA 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 immediately notify the Delaware Nation and the Stockbridge-Muncee Tribe (the Tribes). FHWA and DelDOT will forward information regarding Native American discoveries to the DE SHPO and the Tribes for review and comments. This will occur as soon as possible, within a period no longer than two (2) weeks. FHWA will request that the parties comment on the information within two (2) weeks of receipt. FHWA will then consult with the Tribes, the DE SHPO and DelDOT to determine an appropriate course of action in accordance with 36 CFR 800, and taking into account the above cited state law.

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, as applicable.

#### G. Residual Right of Way

The Project will require property acquisition that may or may not involve impacts to archaeological sites. Should existing right of way or lands acquired for purposes of the Project be later subdivided and/or declared excess right of way (to be leased, transferred, or sold), preservation covenants for that subject parcel will first be considered among DelDOT, FHWA, and DE SHPO before DelDOT takes any action to divest itself from such lands. The parties will determine if the subject parcel(s) contain, or has the potential to contain, any historic properties, and if so, determine the need for any legal instrument that would ensure long-term preservation of such properties. This will adequately address any reasonably foreseeable adverse effects that could occur due to transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions to ensure long-term preservation (or mitigation) of the property's historic significance (36 CFR Part 800.5(a)(2)(vii)).

## II. Historic Buildings, Structures, and Districts

The Project will adversely affect the following historic properties by introducing changes in vehicular access and use to the property. Access is a key element in the significance of the resource and has correlated impacts upon the physical, functional, and setting features that contribute to their historic significance and viability as a historic property.

Teddy's Tavern (S-08383); and  
The Ellendale State Forest Picnic Facility (S-08151)

To mitigate for the adverse effects to these two historic properties, DelDOT shall, in consultation with the DE SHPO and the property owners, develop conceptual plans for new travel information and/or directional signs. This also includes consideration of naming the converted service road to "Teddy's Tavern Road" or other mutually agreeable roadway name. DelDOT's Chief of Traffic will participate in the consultation. The intent of the roadside signs or new road

name is to ensure that the typical traveler has sufficient, safe, and advanced knowledge that the property exists and remains open and accessible despite changes or access limitations resulting from the Project.

Conceptual plans will include suggested number, size, location, and content of the signs. If approved by the historic property owner, DelDOT shall install the signs in accordance with the agreed upon plans.

*DelDOT shall place the travel information or directional signs for each property in locations that conform to DelDOT's Manual on Uniform Traffic Control Devices (MUTCD) ([http://deldot.gov/information/pubs\\_forms/manuals/de\\_mutcd/index.shtml](http://deldot.gov/information/pubs_forms/manuals/de_mutcd/index.shtml)), FHWA Policy, and Sussex County code, as applicable.*

DelDOT shall install the travel information or directional signs prior to or as part of the Project.

Being within state right of way, the travel or directional signs will be permanent fixtures and will remain "in perpetuity" under management of DelDOT's Traffic or Sign Shop Section so long as historic buildings, structures, or other fixtures remain visible from the U.S. 113 corridor and remain open for public use. This will alert the vehicular traveler on how access can be achieved to either facility.

The travel or directional signs for the historic properties may be combined, updated, or replaced with similar amenities for other roadside businesses or attractions that may be installed during the Project or later in time.

During the annual review of this MOA, mandated in Stipulation X, DelDOT shall consult with the DE SHPO and FHWA to determine the need for additional survey for buildings, structures, or districts that have come to meet the minimum fifty (50) year age criterion. If so needed, DelDOT shall identify and evaluate any additional such properties, and assess the effects of the Project thereon, following the process outlined for Archaeological Resources in Stipulations I.A. and I.B. of this MOA.

### **III. Unexpected Discoveries**

In the event that previously unidentified cultural resources are discovered or unanticipated effects to historic properties occur during construction, DelDOT shall instruct the contractor to cease construction in the immediate area, and immediately notify FHWA. FHWA shall comply with 36 CFR Part 800.13 by consulting with the DE SHPO. If said discovery or unanticipated effects pertain to resources of Native American affiliation, FHWA and DelDOT shall include the Delaware Nation in the consultation. The FHWA will notify the DE SHPO and the Delaware Nation within one (1) working day of the discovery. The FHWA, DelDOT, and the DE SHPO will meet at the location of the discovery within forty-eight (48) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. If the affected resource is of Native American affiliation, FHWA shall first consult with the Delaware Nation before implementing any such treatment option.

#### **IV. Disposal of Project Related Materials**

DelDOT shall consult with the DE SHPO concerning the location of the disposal of materials produced by any demolition, construction, excavation, and/or dredging associated with the Project. Upon the provision of adequate information, the DE SHPO will have thirty (30) days to review any and all such locations to ensure the disposal will not adversely affect historic properties. DelDOT shall notify the contractor, if the DE SHPO objects to the proposed disposal sites, and request alternative disposal site(s). In turn, this site(s) will be subject to DE SHPO review. DelDOT shall ensure that its contractors do not use any such site(s) if the activity may adversely affect historic properties.

#### **V. Review of Project Related Plans**

DelDOT shall provide copies of the preliminary, semi-final, and final design plans of the Project to the DE SHPO. FHWA will also notify the Delaware Nation of the availability of the plans, and if so requested, provide copies for their review and comment. The DE SHPO and the Delaware Nation as consulting parties will have thirty (30) days from the receipt of all materials to provide comments on the plans. DelDOT shall take into account any comments provided.

#### **VI. Subsequent Changes to the Project**

If DelDOT proposes any significant changes to the Project affecting location, design, methods of construction, materials, or footprint of the Project, DelDOT shall provide the DE SHPO, the Delaware Nation, and other consulting parties identified later in time with information concerning the proposed changes. The DE SHPO and consulting parties will have thirty (30) days from the receipt of this information to comment on the proposed changes. DelDOT shall take into account any comments, prior to implementing such changes.

Should changes occur, DelDOT, in consultation with the DE SHPO, may need to redefine the APE beyond the areas depicted in **Attachment A**. DelDOT shall consult with the DE SHPO to identify and evaluate historic buildings, structures, sites, and/or districts in any newly affected areas, and assess the effects of the Project thereon, following the process outlined for Archaeological Resources in Stipulations I.A. and I.B of this agreement, or as applicable under 36 CFR Part 800.13.

#### **VII. Administrative Stipulations**

##### **A. Personnel Qualifications**

All cultural resource work carried out pursuant to this agreement will be performed by or under the direct supervision of a person or persons meeting at a minimum the “*Secretary of the Interior's Standards and Guidelines*” ([http://www.cr.nps.gov/local-law/Arch\\_Standards.htm](http://www.cr.nps.gov/local-law/Arch_Standards.htm)), formerly 36 CFR Part 61 Appendix A.

DelDOT's Environmental Studies personnel will have direct authority to select and authorize any and all qualified cultural resource management firms or subconsultants to carry out this work on an as-needed basis throughout the duration of the Project.

**B. Survey and Data Recovery Standards**

DelDOT shall ensure that any and all cultural resource surveys and/or data recovery plans conducted pursuant to this MOA are done in accordance with the *Secretary of the Interior's Standards and Guidelines for Identification and Evaluation*, and for *Archaeological Documentation*, and in accordance with the DE SHPO's *Guidelines for Architectural and Archaeological Surveys in Delaware* (1993), as applicable.

Survey proposals and data recovery plans shall include a research design that stipulates: determination of objectives, methods, and expected results; production of draft and final reports; and preparation of materials for curation in accordance with Stipulation I.E., including budgeting for initial conservation assessments and treatment. Additional requirements for data recovery plans are found in Stipulation I.B. of this Agreement.

All data recovery plans shall also take into account the ACHP's guidance for *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*. Reports will meet professional standards set forth by the Department of the Interior's "*Format Standards for Final Reports of Data Recovery Program*" (42 FR 5377-79).

All data recovery plans, public outreach, or future consultation shall also follow and/or consider any supplemental guidance and provisions provided by, but not limited to, the American Association of State Highway Transportation Officials, FHWA, Transportation Research Boards, National Park Service, ACHP, and/or recognized academic journals or professional organizations as identified by DelDOT and/or the DESHPO.

DelDOT shall ensure that all draft and final cultural resource reports are provided to the FHWA and DE SHPO within four (4) years of the completion of any fieldwork. Relevant draft and final cultural resource reports will also be provided to the Delaware Nation.

**VIII. Resolving Objections**

Should any signatory to this MOA object in writing to FHWA regarding any action carried out or proposed with respect to the Project or implementation of this MOA, FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options.

- A. Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;

- B. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
- C. Notify FHWA that it will comment pursuant to 36 CFR Part 800.7(a) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR Part 800.7(c)(4).

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this MOA that are not the subject of the objection will remain unchanged.

At any time during the implementation of the measures stipulated in this MOA, should any objection pertaining to any such measure or its manner of implementation be raised by a member of the public, FHWA shall notify the parties of this MOA and take the objection into account consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

#### **IX. Duration**

This MOA shall remain in force until its Stipulations have been fulfilled. This time period shall not exceed five (5) years from the date of the final signature. If within six (6) months of the end of this five year period, stipulations remain unfulfilled, the parties to this Agreement will consult to determine if extension or other amendment of the Agreement is needed. No extension or amendment will be considered in effect unless all the signatories to the MOA have agreed to it in writing.

#### **X. Review of Implementation**

FHWA, DeIDOT, and the DE SHPO shall review the Project annually to monitor progress of the implementation of the terms and conditions within this MOA. This review should occur in January of each year following the execution of the MOA.

#### **XI. Amendments**

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

#### **XII. Termination**

- A. If the FHWA or DeIDOT 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 SHPO may propose to the other parties that the MOA be terminated in accordance with 36 CFR Part 800.6(c)(8).

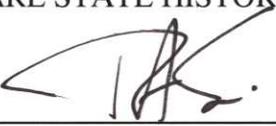
- B. The party proposing to terminate this MOA shall notify all other parties to this MOA, explaining the reasons for proposing termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should all consultation fail, FHWA or the DE SHPO may terminate the MOA by so notifying all parties in writing.
- 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 ACHP pursuant to 36 CFR 800.7(a)(2)

Execution of this MOA by the FHWA, DE SHPO and DelDOT, and implementation of its terms is evidence that the FHWA has afforded the ACHP an opportunity to comment on the US 113 North/South Study – Ellendale Area Project and that the FHWA has taken into account the effects of the undertaking on historic properties.

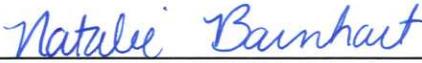
FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 8/12/10  
Hassan Razza, FHWA Delmar Division Administrator

DELAWARE STATE HISTORIC PRESERVATION OFFICER

By:  Date: 8.9.10  
Timothy Slavin, DHCA Director and State Historic Preservation Officer

DELAWARE DEPARTMENT OF TRANSPORTATION

By:  Date: 8/5/10  
Natalie Barnhart, DelDOT Chief Engineer

# ATTACHMENT A

