

Appendix C

MEMORANDUM OF AGREEMENT

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER,
AND THE DELAWARE DEPARTMENT OF TRANSPORTATION
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION REGARDING THE REPLACEMENT OF BRIDGE 68 OVER
WILSON RUN AND THE MAINTENANCE REPAIR OF BRIDGE 2 OVER
BRANDYWINE CREEK, BOTH ON ROCKLAND ROAD IN ROCKLAND,
NEW CASTLE COUNTY, DELAWARE**

WHEREAS, the Federal Highway Administration (FHWA) through the Delaware Department of Transportation (DeIDOT) proposes replacing Bridge 68, with a new deck and reconstructed parapets and wingwalls, and conducting maintenance repair of Bridge 2;

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;

WHEREAS, the FHWA, pursuant to 36 CFR 800.4(c), has determined that Bridge 68 and Bridge 2 are individually eligible for the National Register of Historic Places and are contributing resources to the Rockland Historic District (CRS # N-343);

WHEREAS, the FHWA has determined that this undertaking will have an Adverse Effect upon Bridge 68 and the Rockland Historic District;

WHEREAS, the FHWA has consulted with the Delaware State Historic Preservation Officer (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 effects to Bridge 68 and the Rockland Historic District;

WHEREAS, the Delaware Department of Transportation (DeIDOT) participated in the consultation and has been invited to be a signatory to this Memorandum of Agreement (MOA);

WHEREAS, the Delaware Preservation Fund (DPF) and Preservation Delaware, Inc. (PDI) participated in the consultation and have been invited to concur in this MOA as consulting parties;

NOW, THEREFORE, the FHWA, DE SHPO, DeIDOT, DPF, and PDI agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the project on historic properties.

STIPULATIONS

FHWA shall ensure that the following stipulations are implemented:

I. Bridge 68

- A. Prior to initiation of any construction activities, DelDOT will ensure that Bridge 68 is documented to the standards set forth in the **Delaware Guidelines for Documentation of Historic Properties as Mitigation of an Adverse Effect under Section 106 of the National Historic Preservation Act (NHPA)**. DelDOT will submit a copy of the draft documentation to the DE SHPO for review and approval. DelDOT will take into account any comments on the draft, after which, DelDOT will provide final documentation to the DE SHPO and to appropriate local archives designated by the DE SHPO. DelDOT shall ensure that the documentation is carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualification Standards for Architectural History/History*.
- B. DelDOT shall invite the DE SHPO, DPF, and PDI, and adjacent property owners, Dr. Ronald Finch and Mrs. Beverly Finch to attend the pre-construction meeting to clarify and define to DelDOT and its awarded contractor the approved design or preservation treatments that are to be implemented during construction.
- C. DelDOT shall instruct its qualified cultural resource consultants, meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeology* to conduct monitoring during construction work on Bridge 68 for potential archaeological remains. Archaeological monitoring will occur during removal and excavation of the bridge deck and wingwalls, ditching and repaving between STA 0+12.00 to STA 1+00. The monitoring will include any investigation and recordation of potential archaeological remains associated with, but not limited to, historic milling features adjacent to the bridge. DelDOT shall instruct its contractors to cooperate during this monitoring. If any archaeological remains are discovered, construction will stop in order for the archaeologists to conduct the investigation. DelDOT will ensure ongoing consultation with the DE SHPO and other consulting or interested parties during the investigation. DelDOT shall have its consultants prepare a report describing the results of the investigation; the report shall meet the *Secretary of the Interior's Standards and Guidelines*, as applicable, and the DE SHPO's *Guidelines for Architectural and Archaeological Surveys in Delaware*.
- D. DelDOT shall ensure that the stone facing for the reconstructed parapets and wingwalls is under a historic compliance review and approval process. DelDOT's contractor shall prepare a test panel(s) off-site or in a discrete section of the bridge, to match, as close as possible, the current historic stonewall and parapet pattern, texture and general appearance. The stone facing is subject to review and approval by the signatories and concurring and interested parties to this Memorandum.

E. DelDOT shall enact measures to protect the Turbine House, which is also considered a contributing element of the Rockland Historic District from damage during construction. The following measures shall be implemented and enforced by DelDOT:

1. No heavy equipment parked within 6' of the existing building.
2. No storage or stockpiling of materials within 6' of the existing building.
3. Excavation, backfilling and other work within 6' of the turbine house shall be done by the gentlest means possible. The use of jackhammers or other impact equipment near the turbine house shall be closely monitored and discontinued immediately if the vibrations are noticeably transmitted onto the house.
4. Caution must be taken to prevent any lateral load or impact on the existing foundations and superstructure of the turbine house.

The aforementioned precautions will be employed during construction activities on Bridge 68. In the event of damage to the turbine house during construction, the contractor, DelDOT, DE SHPO, and consulting and interested parties shall consult and develop methods to temporarily and permanently repair any damage consistent with the *Secretary of the Interior's Standards for Rehabilitation*.

F. DelDOT shall remove the hot-mix and concrete slabs previously dumped at the northeast corner of Bridge 68. The northeast corner will be cleared of all debris relating to this undertaking and previous projects.

II. Delaware's Historic Bridges

DelDOT recommits to further exploring the development of a historic bridge inspection/maintenance program as outlined in Stipulation VIII of the Programmatic Agreement among the Federal Highway Administration (FHWA), the Advisory Council on Historic Preservation (ACHP), and the Delaware State Historic Preservation Officer (DE SHPO). As part of the development of a historic bridge program, DelDOT shall evaluate its current identification/maintenance/design/historic compliance procedures for National Register eligible bridges, and establish guidelines improving our programs. The Department recognizes the interest expressed by Preservation Delaware, Inc. and will solicit their input, as well as other interested parties, as a program is further developed.

III. Disposal of Project Related Materials

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

IV. Project Changes

If DelDOT proposes any changes to the undertaking affecting location, design, methods of construction, materials, or project footprint, DelDOT shall provide the DE SHPO, DPI, and

PDI with information concerning the proposed changes. All consulting parties will have sufficient time in which to comment. DelDOT will take into account any comments prior to implementing such changes.

V. Late Findings (Archaeology)

In the event that previously unidentified archaeological resources, other than those identified under Stipulation I.C. of this Agreement, are discovered during construction, DelDOT shall instruct the contractor to cease construction in the immediate area, and shall proceed with consultation under 36 CFR 800.13(b)(3).

VI. Amendments

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

VII. Dispute Resolution

Should any signatory of this MOA 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 Advisory Council on Historic Preservation (ACHP). Within 30 days after receipt of all pertinent documentation, the ACHP 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). Any ACHP 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 ACHP 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 subjects of the objections will remain unchanged.

VIII. Termination Procedures

- A. If the FHWA or DelDOT determines that it cannot implement the terms of this MOA, or the SHPO determined that the MOA is not being properly implemented, FHWA, DelDOT, or the SHPO may propose to the other parties of 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 consultation fail, FHWA or the SHPO may terminate the MOA by 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).

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 years from the date of final signature.

Execution of this Memorandum of Agreement by the FHWA, DE SHPO, and DelDOT, 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 effects on historic properties.

SIGNATURES:

FOR THE FEDERAL HIGHWAY ADMINISTRATION

Name and Title _____ Date _____

FOR THE DELAWARE STATE HISTORIC PRESERVATION OFFICE

Name and Title _____ Date _____

FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION

Walter Taylor ASSISTANT DIRECTOR *AUG 11, 2004*
Name and Title _____ Date _____

CONCUR: THE DELAWARE PRESERVATION FUND

Name and Title _____ Date _____

CONCUR: PRESERVATION DELAWARE, INC.

Name and Title _____ Date _____