

Portsmouth-Kittery
BHF-X-T-0101(015)
13678

Memorandum of Agreement
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR PART 800.6(a)

WHEREAS, the NH Division of the Federal Highway Administration (NHFHWA) and the Maine Division of Federal Highway Administration (MEFHWA) propose the modified, in-kind replacement of the lift span and the rehabilitation of the flanking tower spans of the Memorial Bridge (247/084) that carry US Route 1 over the Piscataqua River between Portsmouth, NH and Kittery, Maine; and

WHEREAS the NHFHWA and MEFHWA in consultation with the NH State Historic Preservation Officer (NHSPO) and the Maine State Historic Preservation Officer (MESHPO) and pursuant to regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have determined that the proposed undertaking will have an adverse effect on the following properties that are eligible for listing in the National Register of Historic Places:

Memorial Bridge Historic District, Portsmouth, NH and Kittery, Maine
Scott Avenue Bridge, Portsmouth, NH
Portsmouth National Register Historic District, Portsmouth, NH
Memorial Bridge (lift span and two flanking spans), Portsmouth, NH and Kittery, Maine;

and;

Whereas the NHFHWA and the MEFHWA have agreed that the New Hampshire Department of Transportation (NHDOT) and the Maine Department of Transportation (MEDOT) shall participate in the consultation with the NHSPO and MESHPO respectively to find ways to mitigate effects to the above four properties through their respective standard consultation processes; and

Whereas, the NHDOT on behalf of the NHFHWA will execute these efforts to mitigate the adverse effects of the project; and

WHEREAS, the NHDOT has solicited public comment through the public hearing process and the consulting party procedures with NHFHWA and MEFHWA as stated in 36 CFR 800 (2); and

WHEREAS, the NHFHWA and MEFHWA have agreed that the NHDOT shall participate in consultation with the NHSPO and the MESHPO to find ways to mitigate its effects on impacted archaeological sites found eligible for the National Register of Historic Places under its standard phased investigations; and

WHEREAS, in accordance with 36 CFR 800, the NHFHWA and MEFHWA acknowledges and accepts the advice and conditions outlined in the Advisory Council on Historic Preservation's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," and other mitigation procedures published in the Federal Register on May 18, 1999; and

WHEREAS, under the Memorandum of Agreement (MOA), NHDOT and NHSHPO agree that recovery of significant information from affected significant archaeological sites will be done in accordance with published guidance; and

WHEREAS, all consulting parties agree that Native American tribes that may attach religious or cultural importance to the affected property will be consulted in the development of a mitigation approach to each significant Native American site; and

WHEREAS, to the best of our knowledge and belief, no human remains associated or unassociated funerary objects or sacred objects of cultural patrimony as defined in the Native American Graves Protection Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work.

NOW, THEREFORE, NHFHWA shall ensure that the following terms and conditions will be implemented by the NHDOT under this Memorandum of Agreement in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 16 U.S.C. 470:

Stipulations

I. Minimization Through Design Modification

NHDOT selected an alternative that minimizes, as much as possible, the effects of the bridge rehabilitation on the character defining features of the Memorial Bridge. The selected design includes a modified in-kind replacement of the lift-span and the rehabilitation of the two existing flanking spans. The in-kind replacement for the lift-span includes the verticals, diagonals, lateral bracing, and sway bracing,

II. Review of Design Elements

The NHDOT will consult with the Cities of Portsmouth and Kittery, as applicable, concerning such design elements as lighting, bridge rail, and the Memorial Park design.

III. Bridge Documentation

The NHDOT will document the Memorial Bridge with its lift-span and two flanking spans, the Maine Approach span, and the Scott Avenue Approach span through its detailed revised Historic Structures Report, large format photographs of the existing bridge, and large format photographs of the original design drawings.

IV. Interpretive Sign

An interpretive sign, whose form and content will be coordinated with the City of Portsmouth, City of Kittery, MEFHWA, NHFHWA, NHSHPO, and MESHPO, by NHDOT will be created and erected to memorialize the significance of the Memorial Bridge.

V. Photographic Documentation of Rehabilitation

Professional photographs will document the rehabilitation / reconstruction of the Memorial Bridge. It will include photographs of the rehabilitation of the flanking span, the floating out of the existing lift span, and the floating in of the lift span replacement.

VI. Archaeological Investigations

- A. All appropriate phases of archaeological investigations and construction monitoring will be undertaken in archaeologically sensitive areas within the project area. If a site determined eligible for the National Register of Historic Places is identified within the area of impact, archaeological documentation guided by a data recovery plan for the affected portion of the site will be completed and accepted by the NESHPO. It is recognized that a small number of archaeological sites that possess very high significance may require preservation-in-place if feasible.
- B. If human remains and grave-associated artifacts are discovered while carrying out the activities pursuant to this MOA, the NHFHWA and NHDOT will immediately notify the appropriate authorities, as prescribed by New Hampshire statutes, and the NESHPO, to determine an appropriate course of action in accordance with RSA 277-C:8a-8j and the Advisory Council on Historic Preservation's (Council's) Revised "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," adopted by the Council on February 23, 2007 at its quarterly business meeting in Washington, D.C.

NHFHWA shall also ensure that the following terms and conditions are implemented:

I. Dispute Resolution

Should the NESHPO or MESHPO object within 30 days to any plans or specifications provided for review or action proposed pursuant to this agreement, NHFHWA shall consult with the objecting party to resolve the objection. If NHFHWA determines that the objection cannot be resolved, NHFHWA shall request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any Council comment provided in response to such a request will be taken into account by NHFHWA in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; NHFHWA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

II. Termination of Agreement

If any signatory determines that the terms of the MOA cannot be executed, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate the agreement. If the terms of this agreement have not been implemented by December 1, 2015, this agreement shall be considered null and void. In such event, the agency shall notify the parties to this agreement, and if it chooses to continue with the undertakings, shall reinitiate review of the undertaking in accordance with 36 CFR 800.

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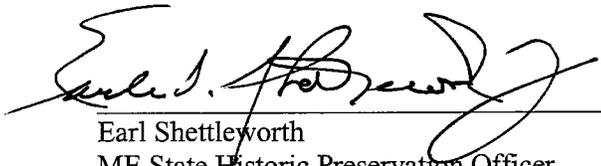
III. Amendment

Any party to this agreement may propose to the agency that the agreement be amended, whereupon the agency will consult with the other parties to this agreement to consider the amendment. 36 CFR 800.6 (c)(1) shall govern the execution of this amendment.

Execution of this MOA by NHFHWA, NESHPO, MEFHWA, and MESHPO and its subsequent acceptance by the Council, and implementation of its terms are evidence that NHFHWA has afforded the Council an opportunity to comment on this project, and that NHFHWA has taken into account the effects of the undertaking on historic properties.

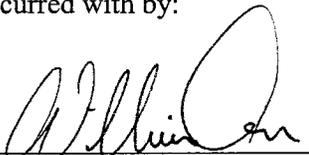

Elizabeth Muzzey
NH State Historic Preservation Officer
Date: 11/5/07

for 
Kathleen O. Laffey, Administrator
NH Div. Federal Highway Administration
Date: 11/8/07


Earl Shettleworth
ME State Historic Preservation Officer
Date: 11/26/07


Jonathan McDade, Administrator
Maine Div. Federal Highway Administration
Date: 12/12/07

Concurred with by:


William Cass, Project Development Director
New Hampshire Department of Transportation
Date: 11/13/07


John E. Dority, Chief Engineer
Maine Department of Transportation
Date: 12/11/07