Preserving America's Heritage

November 5, 2004

Mark Hasselmann
Environmental Coordinator
Federal Highway Administration
Edmund S. Muskie Federal Building
Room 614
40 Western Ave.
Augusta, ME 04330

REF: *Statewide Agreement for the Federal Aid Highway and Federal Transit Programs in Maine.*

Dear Mr. Hasselmann: Mark:

The enclosed Programmatic Agreement (PA) regarding the Federal Aid Highway and Federal Transit programs in Maine has been executed by the ACHP. This action constitutes the comments of the ACHP required by Section 106 of the National Historic Preservation and the ACHP's regulations. We have retained one signed original copy for our files and are returning to you the remaining four signed copies. Please provide these original, fully executed agreements to the other signatories, and copies to the Federal Preservation Officers for FHWA and FTA.

The ACHP appreciates your cooperation in reaching a satisfactory resolution of this matter. It has been a pleasure working with you, Sylvia Michaud, and the other parties to develop and execute this PA. Should you have any questions, please contact me at (303) 969-5110 or by e-mail at clegard@achp.gov..

Sincerely,

Carol Legard

Carol Legard
FHWA Liaison
Office of Federal
Agency Programs

Enclosure

distributed to
Sylvia Michaud
Earle Shettleworth
Pete Butler
on 11-10-04
PLK

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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 Implementation of the Federal Aid Highway
and Federal Transit Programs in Maine

Whereas, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) administer the Federal Aid Highway and Federal Transit Assistance Programs in Maine authorized by 23 U.S.C. 101 et seq. and 49 U.S.C. Chapter 53, through the Maine Department of Transportation (Maine DOT);

Whereas, the FHWA and FTA have determined that their respective Programs may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and have consulted with the Advisory Council on Historic Preservation (Council) and the Maine State Historic Preservation Officer (SHPO) pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

Whereas, Maine DOT employs contractors and consultants meeting the requirements of the Secretary of the Interior's Professional Qualifications Standards (48FR 190:44738-44739) and the Maine State Historic Preservation Officer's Standards for Archaeological Work in Maine, Chapter 812 (94-089); and

Whereas, Maine DOT participated in the consultation and has been invited to be a signatory to this Programmatic Agreement;

Whereas, FHWA and FTA have notified federally recognized Indian tribes of this Programmatic Agreement, that it does not change the existing tribal coordination process and that it does not apply to FHWA and FTA undertakings located on tribal lands;

Now, therefore, the FHWA, FTA, Council, and SHPO agree that the Federal Aid Highway and Federal Transit Assistance Programs shall be administered in accordance with the following stipulations to satisfy the respective Section 106 responsibilities for all aspects of the Programs.

STIPULATIONS

FHWA or FTA, as applicable, shall ensure that the following measures are carried out:

1. Purpose and Scope

    A. This Programmatic Agreement sets forth the process by which FHWA and FTA, with the assistance of Maine DOT, will meet their respective responsibilities for undertakings pursuant to Section 106 and 110 of the National Historic Preservation Act (NHPA) 16 U.S.C. 470f and 16 U.S.C. 470 h-2.

B. FHWA and FTA Responsibilities - In compliance with their responsibilities under the NHPA, and as a condition of award to Maine DOT of any assistance under the Federal Aid Highway or Federal Transit Assistance Programs, FHWA and FTA will ensure that Maine DOT carries out the stipulated provisions of 36 CFR Part 800 and applicable Council policy statements and guidelines for undertakings subject to this agreement. FHWA and FTA will be directly responsible for initiating and conducting tribal consultation on individual projects in accordance with 36 CFR 800.2 (c) (2).

C. Maine DOT Responsibilities - Pursuant to this agreement, Maine DOT will ensure that all cultural resource consultants employed to conduct work in the field of cultural resources shall meet the qualifications set forth in the Secretary of the Interior's Professional Qualifications Standards for such work and the Maine State Historic Preservation Officer's Standards for Archaeological Work in Maine, Chapter 812 (94-089). Maine DOT will organize an annual meeting with FHWA, FTA, SHPO and ACHP to assess activities conducted under this agreement, and the status of the agreement.

2. Projects Exempted from SHPO, FHWA, and FTA Review

The following types of undertakings are activities in which Maine DOT routinely utilizes Federal Aid Highway and Federal Transit Assistance funds and which have little or no potential to affect historic properties, provided they are limited to the activities listed and are not part of a larger project. Maine DOT Cultural Resource staff will review projects to ensure that proposed exemptions are consistent with this section.[1] Projects limited to these activities shall not require Section 106 consultation with SHPO nor any further consideration under Section 106:

A. Activities not resulting in construction

Planning studies[2]
Purchase of equipment, technology systems, vehicles
Operations costs
Program financing
Educational programs and materials

B. Replacement (same type/size and no impact to previously undisturbed area)

Road base, pavement
Non Historic Bridge: decks, wearing surfaces, railings, wing walls (excludes railroad bridges)[1]
Culverts (excludes railroads)
Rail: track structure, ballasts, ties

[1] The review will include screening according to the recently completed Maine Historic Bridge Management Plan (August 2004), as appropriate.
[2] Although non reporting, some planning studies may be screened early to determine National Register listings/eligibility

Signs, traffic signals
Guardrail, curbs, sidewalks
Fences (not including stone walls), plant material
Marine facility infrastructure: transfer bridge, pen, dolphins, piers, pilings, floats, moorings, boats

C. Routine maintenance and repair that restore original/constructed conditions (no visual changes apparent and no impact to previously undisturbed ground)

Items listed under 2.B. (Replacement) above
Vegetation management
Drainage systems
Crack sealing
Filling in scour holes, eroded areas
Removing winter sand (all methods)
Re-establishing ditches

D. Structural work limited to non-historic, non-eligible bridge, not within an historic district (includes abutment repair above ground only - subsurface disturbance needs review)[1]

E. Work on the Interstate or other controlled access highways within existing interchanges, medians, and travel ways within previously constructed slope limits

F. Work within previously constructed limits with no visual changes apparent

Paving over existing paved surface
Installing in-pavement or in-fill technologies (e.g., scales)
Slip and invert lining
Rail lines

G. Activities causing minimal or no disturbance to natural ground

Installing signs with wooden or "u" channel posts
Placing or removing above ground temporary or easily moved items (e.g., benches, boulders)
Planting within plow layer
Loaming, seeding

H. Work within existing non-interstate intersections, medians, highways, rail lines, within previously constructed limits (Archeology Only)

Paving shoulders
Installing signals

3. Reporting

A. Maine DOT will provide annual reports to FHWA, FTA and SHPO of Projects Exempted from Review. Each report will reflect one federal fiscal year (October 1 to September 30) and be delivered by October 31, beginning in 2004[3]. Annual reports will include a list of projects with associated project identification number, town, program, scope of work, location, description, and exemption category. This list will be provided as documentation of how Stipulation 2 of the programmatic agreement has been applied by Maine DOT to its annual program.

4. Section 106 Review of Other Projects

For those projects not exempt from review under terms of Stipulation 2, the following shall be implemented:

A. Initiation of the Section 106 Process - 36 CFR Part 800.3

Maine DOT will be responsible for initiating the Section 106 process, including establishing the undertaking, coordinating with other reviews, and identifying consulting parties in accordance with 36 CFR 800.3 (a) – (f). Prior to defining the APE, FHWA or FTA, as appropriate, will initiate and conduct consultation with federally recognized tribes to determine if there are properties of concern to them in accordance with 36 CFR Sections 800.3, 800.4, and 800.5. Maine DOT may assist in this consultation with the consent of the tribes. Maine DOT will identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with section 800.2 (d).

B. Identification of Historic Properties - 36 CFR Part 800.4

Maine DOT will be responsible for defining the area of potential effect (APE) for each undertaking, identifying historic properties within the APE, and evaluating the eligibility of any historic properties for inclusion in the National Register of Historic Places. These activities will be carried out in consultation with SHPO and consulting parties, in accordance with 36 CFR Part 800.4 (a) – (c), and in coordination with FHWA, FTA and any Indian tribes that ascribe traditional cultural and religious significance to historic properties that may be affected. All cultural resources identified within the APE will be examined for their integrity and eligibility in accordance with the criteria for listing in the National Register of Historic Places as set forth in 36 CFR Part 60.4.

[3] The 2004 report (only) will cover the period July 1 through September 30.

C. Finding of No Historic Properties Affected

If Maine DOT determines that no historic properties will be affected by the undertaking, it will forward this finding and supporting documentation [800.11(d)] to SHPO for concurrence. Copies of this documentation will be provided to all consulting parties. If SHPO does not concur with Maine DOT's findings, the documentation will be submitted to FHWA or FTA, as appropriate, for resolution. If, SHPO does not respond within 30 days of receipt of an adequately documented finding of no historic properties affected, Maine DOT may assume SHPO concurs in its finding. If, through consultation, FHWA, FTA, SHPO, and Maine DOT reach consensus, the process will move forward in accordance with this agreement, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.4 through 800.6.

D. Assessment of Adverse Effects – 36 CFR Part 800.5

1. Finding of No Adverse Effect - If Maine DOT determines, and SHPO concurs, that historic properties will be affected by the undertaking, Maine DOT shall apply the Criteria of Adverse Effect, in accordance with 36 CFR Part 800.5(a). If Maine DOT determines that the undertaking will have no adverse effect on historic properties, it will notify SHPO and any other consulting parties in writing. The SHPO will review this determination and provide written comments to Maine DOT within 30 days from receiving Maine DOT's finding and supporting documentation as set forth in 36 CFR 800.11. If SHPO concurs with Maine DOT's no adverse effect determination, Maine DOT shall document that finding, make it available for public review, and proceed with the undertaking as planned. If SHPO or any other consulting party disagrees with Maine DOT's finding, within the 30 day review period it will specify its reasons for disagreeing and Maine DOT will consult further with the objecting party to resolve this matter either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties, asking FHWA or FTA to resolve the disagreement in accordance with 36 CFR 800.5(c)(2) and (3), or proceeding in accordance with stipulation 4.D.2 of this agreement. [4]

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[4] Finding of No Adverse Effect/Section 4(f) Determination – According to 23 CFR 771.135(f): "The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when: (1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and (2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(1) of this section." [consultation with the Advisory Council for no adverse effect is not required per 36 CFR 800.5(d)(1)]

2. Finding of Adverse Effect - If Maine DOT determines that the undertaking will have an adverse effect on historic properties, it will notify FHWA and/or FTA, SHPO, and any other consulting parties. FHWA and/or FTA will ensure the Section 106 process is completed in accordance with 36 CFR 800.

5. Monitoring

The Council and SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The FHWA, FTA, and Maine DOT will cooperate with the Council and SHPO in carrying out their monitoring and review responsibilities.

6. Communication

A. There shall be ongoing communication among signatories, as necessary, regarding Section 106 issues at Maine DOT's monthly Interagency Meetings. In addition, frequent, informal communication is encouraged among signatories to track progress of Maine DOT project review, and to continually improve processes and partnerships.

B. Annually, on or before December 31, Maine DOT will organize a meeting with FHWA, FTA, and SHPO to report recent activities, review the past year's production, and discuss the status and effectiveness of this agreement and ideas for further increasing efficiency of Section 106 review. Maine DOT will invite the Council to participate in the annual meetings and the Council may participate at its discretion. A review may result in the identification of mutually agreeable modifications to the stipulations listed above.

7. Training

Maine DOT staff will attend training on Section 106 and related issues as opportunities present themselves. Ideally, each staff member playing a role in Section 106 processing shall be encouraged to, and have an opportunity to attend local, state, or national forums on related subjects.

8. Terminate, Amend

A. Any party to this Programmatic Agreement may terminate it for cause by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, the FHWA and FTA shall conduct individual project review pursuant to 36 CFR Part 800.

B. An amended agreement shall become effective when it has been executed by all necessary signatories.

Execution of this Programmatic Agreement and implementation of its terms evidences FHWA and FTA have afforded the Council an opportunity to comment on the FHWA Federal Aid Highway Program and the FTA Federal Transit Assistance Programs, and that FHWA and FTA have taken into account the effects of these programs on historic properties.

John M. Fowler
Executive Director
Advisory Council on Historic Preservation

Date 11/4/04

Jonathan McDade
Maine Division Administrator
Federal Highway Administration

Date 10/27/04

Richard H. Doyle
Regional Administrator
Federal Transit Administration

Date 10/27/04

Earle G. Shettleworth, Jr.
Maine State Historic Preservation Officer

Date 10/27/04

David A. Cole
Commissioner
Maine Department of Transportation