

## PROGRAMMATIC AGREEMENT

AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
REGARDING  
THE CONSTRUCTION OF APPALACHIAN CORRIDOR H,  
ELKINS TO THE WEST VIRGINIA/VIRGINIA STATE LINE  
*STATE PROJECT: X142-H-38.99 C-2; FEDERAL PROJECT: APD-484 (59),*  
IN HARDY, GRANT, TUCKER, AND RANDOLPH COUNTIES,  
WEST VIRGINIA

WHEREAS, the Federal Highway Administration (FHWA) proposes to construct a facility between Elkins, West Virginia and the West Virginia/Virginia State Line, designated as Appalachian Corridor H (the Project); which consists of the Project Build Alternative - Line A (including Option Areas I and F); and

WHEREAS, the FHWA has determined that the Project may have an effect upon properties eligible for inclusion in the National Register of Historic Places (Register) and has consulted with the Advisory Council on Historic Preservation (Council), the West Virginia State Historic Preservation Officer (WVSHPO), and the Virginia State Historic Preservation Officer (VASHPO) pursuant to 36 CFR Part 800, *Protection of Historic Properties*, regulations implementing Section 106 of the National Historic Preservation Act, (16 U.S.C. 470f), as amended; and

WHEREAS, the West Virginia Department of Transportation (WVDOT) has participated in the development of the Project, and has been invited to concur in this agreement; and

WHEREAS, the United States Department of Agriculture, Forest Service, Monongahela National Forest (Monongahela National Forest) and the George Washington National Forest (George Washington National Forest); Capon Springs and Farms; Corridor H Alternatives (CHA); the Association for the Preservation of Civil War Sites (APCWS); and, the Hampshire County, West Virginia, Planning Commission participated in the consultation and have been invited to concur in this agreement; and

WHEREAS, the FHWA has conducted the following cultural resources studies with regard to said Project; and documentation has been provided to the WVSHPO and the VASHPO:

*Corridor Selection Supplemental Draft Environmental Impact Statement (SDEIS) Historic and Archaeological Resources Technical Report November 1991 ; 1st Revision, November 1992 ;*

*Additional Assessment of Historic Structures and Prehistoric Site Sensitivity for Corridor Scheme Options D and E Utilizing Historic Aerial Photography, addendum to the Corridor Selection SDEIS Historic and Archaeological Resources Technical Report, (September 1994);*

*Alignment Selection SDEIS Appalachian Corridor H, Elkins to Interstate 81 Cultural Resources Technical Report - Volumes 1-3 (September 1994 ; 1st Revision, November 1994; 2nd Revision, January 1995);*

*Alignment Selection SDEIS Appalachian Corridor H, Elkins to Interstate 81 Cultural Resources Model Test Report: Development and Field Testing of a Prehistoric Site Sensitivity Model for the Corridor H Project Area, West Virginia and Virginia (September 1994 );*

WHEREAS, due to the size and complexity of the project and the desirability of prioritizing both final design and cultural resources work in accordance with proposed schedules, the project has been divided into 14 sections (sections 3 to 16) located within West Virginia, as defined in Appendix A (See figure 1).

NOW, THEREFORE, the FHWA the WVSHPO and the Council agree that the project will be implemented in accordance with the following stipulations in order to take into account the effect of the project on historic properties:

### Stipulations

The FHWA will ensure that the following measures are carried out:

#### I. Project Sequencing

A. Unless otherwise agreed to by the parties to this agreement, the proposed cultural resources investigations and resulting reports [i.e., Management Summaries, Phase I/Phase II Reports, Determination of Eligibility Reports, Criteria of Effect Reports, Mitigation Reports(e.g., Phase III Data Recovery Reports) and Treatment Plans] will be conducted by section, beginning with Section 6 and followed sequentially by Sections 5, 4, 3, Walnut Bottom Run Wetlands Replacement Area (located within Section 7), Cherry Fork Wetlands Replacement Area (located within Section 16), and Sections 7, 16, 15, 14, 13, 12, 11, 10, 9, and 8.

B. The FHWA affirms that avoidance of adverse effects to cultural resources remains the preferred course of action and that design activities in any Section will not preclude the shifting of the Project centerline, or the cut and fill boundaries, in any adjacent Section if necessary to avoid, minimize or mitigate adverse impacts to historic resources. No design engineering shall be finalized in any Section until Stipulations II.A-G, III.A-D and IV.A have been completed. No work shall proceed in any section which precludes consideration of alternate alignments in Sections where treatment of historic properties has not yet been finalized.

## II. Historic Resources

A. Historic resources are defined as all non-archaeological resources consisting of historic buildings, structures, objects, and districts.

B. The FHWA will identify and evaluate all identified buildings, districts, structures, and objects located within the APE for Register eligibility in accordance with 36 CFR Part 800.4(c). This work will comply with the West Virginia Division of Culture and History, Historic Preservation Unit *Guidelines for Phase I Surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports* (October 1991, and as amended).

C. Determination of Eligibility reports, by section, will be submitted to the WVSHPO for review and comment. The reports will include research design and methods, location information, property descriptions, photographs, site plans, boundary descriptions, pertinent maps, a location specific context statement to evaluate eligibility, eligibility assessments according to the National Register Criteria, and updated West Virginia Historic Resource Inventory forms (and as needed, Virginia Historic Resource forms). Unless otherwise directed by the FHWA in order to comply with Project design scheduling, sequencing of Determination of Eligibility Report submissions will be as stated in Appendix C.

D. If a concurrence regarding eligibility of a resource cannot be reached, FHWA shall obtain a determination from the Secretary of the Interior in accordance with 36 CFR Part 800.4. If the evaluation results in the identification of resources that are eligible for inclusion in the Register, FHWA will ensure that avoidance of adverse effects to the resource is the preferred alternative.

E. The FHWA, in consultation with the WVSHPO, will assess the effects of the Project on all Register eligible properties in accordance with 36 CFR Part 800.5. Criteria of Effect reports, by section (as noted Appendix B), will be submitted to the WVSHPO for review and concurrence. The reports will include property descriptions, photographs, application of the Criteria of Effect and Adverse Effect, pertinent maps, and related information. Project effects will be assessed with regard to physical as well as indirect effects, e.g., visual, audible, and atmospheric effects.

F. The FHWA affirms that they will utilize all feasible, prudent and practicable measures to avoid adverse effects to Register-eligible properties. If it is determined by WVDOT that avoidance may not be possible, FHWA will ensure that a report is prepared section by section and submitted to the WVSHPO for review and comment. This report would evaluate design modifications that will avoid

adverse effects to the cultural resource and take into account feasibility of engineering, cost and other appropriate factors. Consultation based on this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations, to determine whether avoidance of adverse effects to historic resources is practicable.

G. Subsequent to SHPO concurrence that avoidance of the resource is neither prudent nor feasible, or is impracticable, and based upon the results of the Cultural Resource Avoidance Feasibility Reports, the parties shall consult to develop a mitigation plan on a section-by-section basis incorporating appropriate measures to avoid and/or minimize effects to historic resources. Mitigation plans will be subject to approval by the WVSHPO and the Council. The FHWA will ensure that any such mitigation plans are implemented prior to Project construction within the designated area of effect.

### **III. Archaeological Resources**

A. The FHWA will conduct a Phase I reconnaissance and sub-surface testing program within areas of the Project Build Alternative where ground disturbance may result, including all staging, borrow, and designated blast zones (defined as excavation areas). Phase I management summaries of each section will be submitted by WVDOT to the WVSHPO for review and concurrence. The results of Phase I reconnaissance shall be documented by section in a Phase I Management Summary which shall include locational information, descriptions of fieldwork, methods employed, results of fieldwork, pertinent maps, photographs (if required), completed West Virginia Archaeological Site Forms, and recommendations and scope(s) of work for Phase II investigations. Unless otherwise directed by the FHWA in order to comply with Project design scheduling, sequencing of Phase I management summary submissions shall follow the schedule provided in Appendix B.

B. When Phase I survey efforts indicate the presence of archaeological resources that require Phase II testing as determined by FHWA in consultation with the WVSHPO, Phase II sub-surface archaeological testing as detailed in the Phase I Management Summaries will be conducted in accordance with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48FR44716). FHWA will insure that the WVSHPO is provided with an opportunity to review and comment on the Scope of Work (SOW) contained in the Phase I management summary prior to its implementation. If the WVSHPO does not object within 30 days from the receipt of the Phase II SOW, FHWA may implement the Phase II SOW for that section in accordance with the SOW. Following completion of field work, a Phase II management summary will be prepared and provided to the WVSHPO by WVDOT for review and comment. Phase II management summaries will document location information, description of fieldwork, methods employed and results of fieldwork. The summaries will contain descriptions of stratigraphy and features, appropriate mapping, site plans, photographs and evaluation of eligibility according to the National Register Criteria.

C. If FHWA and the WVSHPO agree that an archaeological site is not eligible to the Register then no further cultural resource investigation of that site will be conducted. If FHWA and the WVSHPO agree that an archaeological site is eligible to the NRHP then FHWA will ensure that

Stipulations IID and IIE of the agreement are implemented. If the FHWA and WVSHPO cannot concur regarding eligibility of an archaeological site, FHWA shall obtain a determination from the Secretary of the Interior in accordance with 36 CFR Part 800.4. If the evaluation results in the identification of an archaeological site that is eligible for inclusion in the Register, FHWA will ensure that avoidance of the site is the preferred alternative.

D. FHWA shall consider means to avoid all archaeological sites determined eligible for inclusion on the Register. If it is ascertained by WVDOT that avoidance of an archaeological site determined eligible to the Register may not be possible, FHWA will ensure that a report detailing why avoidance is not feasible is prepared and submitted to the WVSHPO for review and concurrence. This report will evaluate design modifications to avoid the archaeological site and take into account feasibility of engineering, cost and other appropriate factors. Consultation regarding this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations to avoid the resource. Subsequent to consultation, WVSHPO and FHWA will consider appropriate measures to address the findings of the report. If WVSHPO and FHWA cannot concur on the appropriate course of treatment, FHWA will seek the Council's participation in consultation.

E. If it is determined by FHWA and WVSHPO that avoidance of an archaeological site is neither prudent nor feasible, or is impracticable, the FHWA will develop a Phase III data recovery plan in consultation with the WVSHPO in order to mitigate the adverse effects. The Council will be afforded an opportunity to comment on said plan. The data recovery plan will be subject to approval by the WVSHPO and the Council prior to implementation and will be completed prior to the initiation of construction within the area of effect.

F. Within one week of receiving Phase I reports and Phase II reports by section from the consultant given in Appendix B, WVDOT shall distribute to the WVSHPO for review and concurrence. These reports will provide detailed information on archaeological sites identified during the course of the Phase I survey and subsequent Phase II archaeological testing; and will contain all appropriate location information, site and artifact data, specific prehistoric and/or historic contextual information with regard to site descriptions, site mapping, applicable photographs, illustrations, in addition to recommendations for appropriate data recovery. These reports shall incorporate the findings of the Phase I and Phase II management summary reports. These reports will not be used as the basis for determinations of Register eligibility regarding archaeological sites since those determinations will be made on the basis of the Phase II management summary reports. All reports will comply with the West Virginia Division of Culture and History, Historic Preservation Unit "Guidelines for Phase I Surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports (October 1991, and as amended).

G. Any artifactual material(s) recovered during the course of Project investigations will be cleaned, labeled, documented, and packaged pursuant to 36 CFR 79 and the *West Virginia Division of Culture and History Curatorial Guidelines - Collections Management Facility* (n.d.). Unless otherwise agreed to, all artifacts recovered outside of public lands, as well as all supporting documentation (i.e., field notes, mapping, laboratory notes, photographs, and reports), will be delivered to the Collections Management Facility, West Virginia Division of Culture and History upon

adverse effects to the cultural resource and take into account feasibility of engineering, cost and other appropriate factors. Consultation based on this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations, to determine whether avoidance of adverse effects to historic resources is practicable.

G. Subsequent to SHPO concurrence that avoidance of the resource is neither prudent nor feasible, or is impracticable, and based upon the results of the Cultural Resource Avoidance Feasibility Reports, the parties shall consult to develop a mitigation plan on a section-by-section basis incorporating appropriate measures to avoid and/or minimize effects to historic resources. Mitigation plans will be subject to approval by the WVSHPO and the Council. The FHWA will ensure that any such mitigation plans are implemented prior to Project construction within the designated area of effect.

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C. If FHWA and the WVSHPO agree that an archaeological site is not eligible to the Register then no further cultural resource investigation of that site will be conducted. If FHWA and the WVSHPO agree that an archaeological site is eligible to the NRHP then FHWA will ensure that

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D. FHWA shall consider means to avoid all archaeological sites determined eligible for inclusion on the Register. If it is ascertained by WVDOT that avoidance of an archaeological site determined eligible to the Register may not be possible, FHWA will ensure that a report detailing why avoidance is not feasible is prepared and submitted to the WVSHPO for review and concurrence. This report will evaluate design modifications to avoid the archaeological site and take into account feasibility of engineering, cost and other appropriate factors. Consultation regarding this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations to avoid the resource. Subsequent to consultation, WVSHPO and FHWA will consider appropriate measures to address the findings of the report. If WVSHPO and FHWA cannot concur on the appropriate course of treatment, FHWA will seek the Council's participation in consultation.

E. If it is determined by FHWA and WVSHPO that avoidance of an archaeological site is neither prudent nor feasible, or is impracticable, the FHWA will develop a Phase III data recovery plan in consultation with the WVSHPO in order to mitigate the adverse effects. The Council will be afforded an opportunity to comment on said plan. The data recovery plan will be subject to approval by the WVSHPO and the Council prior to implementation and will be completed prior to the initiation of construction within the area of effect.

F. Within one week of receiving Phase I reports and Phase II reports by section from the consultant given in Appendix B, WVDOT shall distribute to the WVSHPO for review and concurrence. These reports will provide detailed information on archaeological sites identified during the course of the Phase I survey and subsequent Phase II archaeological testing; and will contain all appropriate location information, site and artifact data, specific prehistoric and/or historic contextual information with regard to site descriptions, site mapping, applicable photographs, illustrations, in addition to recommendations for appropriate data recovery. These reports shall incorporate the findings of the Phase I and Phase II management summary reports. These reports will not be used as the basis for determinations of Register eligibility regarding archaeological sites since those determinations will be made on the basis of the Phase II management summary reports. All reports will comply with the West Virginia Division of Culture and History, Historic Preservation Unit "Guidelines for Phase I Surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports (October 1991, and as amended).

G. Any artifactual material(s) recovered during the course of Project investigations will be cleaned, labeled, documented, and packaged pursuant to 36 CFR 79 and the *West Virginia Division of Culture and History Curatorial Guidelines - Collections Management Facility* (n.d.). Unless otherwise agreed to, all artifacts recovered outside of public lands, as well as all supporting documentation (i.e., field notes, mapping, laboratory notes, photographs, and reports), will be delivered to the Collections Management Facility, West Virginia Division of Culture and History upon

completion of the Section 106 process. Artifactual material(s) recovered on public lands (e.g. National Forest lands) as well as all supporting documentation (i.e., field notes, mapping, laboratory notes, photographs, and reports), will be delivered to their respective owners upon completion of the Section 106 process.

#### IV. Marked and Unmarked Cemeteries, and Burial Places

A. FHWA will ensure that all marked cemeteries within the Area of Potential Effect will be inventoried and evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If determined eligible, avoidance and review of alternatives to direct impact will be considered as laid out in Stipulation II.F. All procedures for identifying and evaluating burial places will comply with guidelines established in the National Park Service Publication, *National Register Bulletin 41 - Guidelines for Evaluating and Registering Cemeteries and Burial Places* (1992), West Virginia Code 29-1-6b, and the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601).

#### V. Archaeological Monitoring

During the completion of Stipulation III, FHWA will ensure that an appropriate plan for archaeological monitoring of construction areas is developed and implemented as detailed below. It is understood that the measures outlined below will go into effect after the intensive Phase I, Phase II and Phase III archaeological fieldwork has been completed for Sections 3-16 and should not be construed as a replacement strategy for said work.

1) Archaeological monitors, here defined as persons meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9), shall be employed during all soil excavation activities during construction of sections 3-16 of the proposed Appalachian Corridor H project in the following areas: 1) areas defined as having a high potential for containing intact archaeological deposits including but not limited to floodplain, saddles, and ridge tops and 2) areas where previously recorded archaeological sites are in close proximity, approximately within 15-20 meters, to the proposed construction limits although no evidence of their existence was discovered during the initial intensive systematic archaeological field survey effort. Where determined appropriate through consultation with the WVSHPO known site locations will be cordoned off with construction fencing and flagged. No heavy equipment use will be permitted in these areas.

2) The FHWA shall ensure archeological monitors will be on-site during all soil excavation activities in the project areas as specified in paragraph 1 of this plan. The monitors shall maintain surveillance on the construction area as the soil is removed, to identify locations in which the buried cultural strata are exposed. In all areas in which cultural strata is exposed, the monitors will conduct pedestrian investigations to identify whether any significant archaeological features are present. During the execution of the archeological monitoring, the monitors shall maintain a daily written and photographic record of the construction excavation in progress. The archeological monitor will provide monthly progress reports. The report will briefly summarize the purpose, methodology, and results of the monitoring. Each monthly report shall include a site map illustrating portions



completed, and any archeological features recorded during the monitoring.

## **VI. Unanticipated Discovery**

A. In the event of the identification of a feature containing potentially significant archeological features following completion of intensive Phase I, II, and III Archeological field work, the monitor will stake an area with a ten foot radius around the feature, with safety ribbon tied between the stakes. The monitor will instruct the construction contractor to avoid any additional soil excavation or machine movement through the staked area until such time as the resource can be evaluated for Register eligibility and appropriate treatment plan is developed and implemented. Based upon the type of feature and artifacts found in association with it, the monitor shall determine the potential eligibility of the feature for listing on the Register. Documentation of the finding will be provided to the WVSHPO in a weekly management summary. When the WVSHPO concurs that cultural features are not Register eligible, the monitors shall excavate the remainder of the feature, and then immediately notify the construction contractor that construction activities may resume in the area.

B. In the event the identification of a feature containing human remains is found, treatment shall proceed according to the measures in stipulation VII.

## **VII. Human Remains**

Throughout this agreement, reference to human remains includes "cultural items" defined as associated funerary objects, unassociated funerary objects, sacred objects, and items of cultural patrimony.

A. The FHWA will ensure that the discovery of unmarked cemeteries, human remains and associated grave goods and funerary objects during the course of cultural resources investigations or construction activity related to said Project will be brought to the immediate attention of the WVSHPO. The monitors will instruct the construction contractor that the staked area must be avoided until appropriately treated. The monitor shall then proceed to notify the FHWA, as well as the WVSHPO, of the discovery. The location shall be covered in plastic and backfilled with soil, to protect the location until excavation of the human remains can be authorized. No human remains will be intentionally excavated until consultation with the WVSHPO has occurred.

B. FHWA will ensure that all appropriate associated lineage groups or descendant families are contacted. If the human remains are non-Native American in origin, and are associated with unmarked graves and/or cemeteries, the FHWA will contact the appropriate local authorities (e.g. police, coroner's office). If the human remains are Native American in origin, the FHWA will ensure that the appropriate Native American groups are contacted concerning the discovery of human remains and afforded an opportunity to comment on the implementation of stipulations.

C. The FHWA will ensure that the treatment of human remains is in full compliance with the West Virginia Unmarked Burial Law.

D. The FHWA will ensure that the WVSHPO and the Council are provided with information such as the location, description and disposition, concerning the discovery of human remains within 24 hours if the discovery is made during the work week, or the following work day if the discovery is made on a weekend/holiday. No activities that may disturb such sites will be conducted until a treatment plan has been developed in consultation with WVSHPO and appropriate interested parties, the WVSHPO and the Council have been afforded an opportunity to comment, and the plan is implemented.

E. The FHWA affirms that they will avoid human remains encountered during work associated with the Project, where feasible. The location of the burial will be noted on Project mapping, and the location will be cordoned off by fencing to ensure further non-disturbance of the burial site by Project activities. The exposed portion of the burial will be mapped, illustrated, and photographed before being restored to its pre-discovery condition.

F. If avoidance of human remains is considered not feasible, as determined in consultation with the WVSHPO, the following steps will be taken by FHWA:

#### 1) NON-NATIVE AMERICAN HUMAN REMAINS

- a) The non-Native human remains will be evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If it is determined by FHWA and WVSHPO that the remains are not eligible, FHWA will ensure that the remains are either avoided or removed to an appropriate reinterment location.
- b) If the remains are determined eligible, FHWA will evaluate feasibility of avoidance in consultation with the WVSHPO. If construction limits can be altered to avoid the remains, the remains will be restored to pre-discovery conditions, cordoned off and avoided. If the remains cannot be avoided, the following steps will be taken to ensure their proper excavation:
  - i. The burial(s) will be documented fully prior to excavation. Documentation will consist of appropriate detailed mapping, illustrations, and photographs.
  - ii. Excavation of human remains will be undertaken in a careful, respectful, and complete manner in accordance with proper archaeological methods. In addition, excavation of human remains will not involve the use of chemicals which may damage bones during or after excavation.
  - iii. Bones will be labeled and packaged with appropriate locational and contextual information and their location plotted on measured illustrations.

iv. Any artifacts found in association with human burials will be labeled and packaged with appropriate locational and contextual information and their location plotted on measured illustrations.

v. All soil associated with the excavation of a human burial will be saved and stored in labeled packaging.

vi. In the event that scientific analyses will be conducted on human remains, the FHWA, in consultation with the WVSHPO, the Council, and interested persons will devise an appropriate schedule for the completion of said scientific studies.

vii. When claimed by cultural or familial descendants, human remains and associated artifacts shall be reburied following the completion of the post-excavation treatment plan. The FHWA, in consultation with the WVSHPO, and the Council, will ensure the return of human remains to an agreed upon recipient for repatriation within a year following completion of analysis.

viii. When human remains and associated artifacts (grave goods) from unmarked graves are not claimed by descendants the FHWA, in consultation with the WVSHPO, has the option to rebury the remains after archaeological investigations have been completed, or to place them into the state museum where they will be cared for with dignity and respect as determined by the WVSHPO, or designee, or interested parties.

## 2) NATIVE AMERICAN REMAINS

a) If it is determined that the human remains are Native American in origin the Native human remains will be evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If it is determined by FHWA and WVSHPO that the remains are not eligible, the FHWA will ensure that the remains are either avoided or removed to an appropriate reinterment location.

b) FHWA will consult with the WVSHPO and all appropriate Native American tribes and groups regarding any decisions to avoid, preserve in place, or excavate any Native American remains discovered during archaeological monitoring activities. If the avoidance of human remains in the construction corridors is not feasible, then the burial will be excavated following the procedures outlined in below:

i. Prior to examination of the remains, all soil around the burial will be carefully removed and saved in labeled containers.

ii. Photographs will be taken of the burial in place, with detail photographs taken to show noteworthy features.

iii. Detailed measured drawings will be developed to record the archaeological feature, the positions of the bones, and any related artifacts.

iv. Based upon the information gathered from the above measures, FHWA will determine, to the best of its ability, the cultural affiliation of both the remains and associated grave goods.

v. FHWA will notify the WVSHPO, and the Council, as well as any tribe determined to be culturally affiliated with the remains, of their determination of cultural affiliation as well as the basis for this determination.

vi. The WVSHPO will then provide the FHWA with comments on their conclusions of cultural affiliation for the remains within 14 calendar days.

vii. All comments received within the 14 calendar days will be used by the FHWA in making its final determination of cultural affiliation. The final determination by FHWA will be communicated to the WVSHPO, and the Council. If a particular tribe is determined to be affiliated with the remains, the WVSHPO will consult with them regarding further treatment of the remains.

viii. Unless any party objects, FHWA shall proceed with the excavation of the remains.

ix. The Native American groups will be invited to attend the excavation and FHWA will welcome them to perform any religious ceremonies or rituals regarding the excavation of the remains.

- c) If the remains are determined eligible, FHWA will evaluate feasibility of avoidance in consultation with the WVSHPO. If construction limits can be altered to avoid the remains, the remains will be restored to pre-discovery conditions, cordoned off and avoided. If the remains cannot be avoided, the following steps will be taken to ensure their proper excavation:
- d) The FHWA will coordinate with the appropriate Native American groups, as determined by the methods outlined above, to discuss scientific testing of the remains for which the groups have demonstrated cultural affiliation.

## VIII. Performance Standards, Report Submission Schedule and Review Responsibilities

A. All historic and archaeological work will be conducted under the direct supervision of a person or persons who meet, at a minimum, the appropriate qualification standards set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 FR 44738-9, and who have experience in the region and in the pertinent sub-fields of their disciplines. All archeological work will be conducted with reference to and be consistent with the principles contained in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic

Preservation and in the Council's Treatment of Archeological Properties, as well as the Guidelines for Phase I surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports established by the WVSHPO in 1991. All other survey work will be conducted according to the Secretary of the Interior's Standards for Identification and Evaluation as well as WVSHPO Guidelines.

B. The FHWA will submit all Project reports defined as: Phase I management summaries, Phase II management summaries, combined Phase I/II technical reports, Determination of eligibility Reports, Criteria of Effect Reports, Cultural Resource Avoidance Feasibility reports and Data Recovery Plans, addressed in this agreement to the WVSHPO for review within a period not to exceed 90 days from completion of the fieldwork. Unless otherwise noted, WVSHPO will review and comment on Project reports within 45 calendar days of receipt of said reports. If the reports cannot be reviewed in this time frame, the WVSHPO will so inform the FHWA. The WVSHPO must approve treatment plans.

C. The Council will be afforded an opportunity to comment in all instances where an adverse effect may occur. The Council will provide comments on these issues within 45 calendar days upon receipt of all pertinent documentation.

D. The FHWA will ensure that all consulting parties are notified when Determination of Eligibility reports, Management Summary reports, and Archaeological reports are available for inspection. Consulting parties will be notified concurrence by copies of transmittal letters of said reports to WVSHPO. If the Project report includes activities affecting Forest Service lands, a copy of the report will be furnished directly to the Monongahela or George Washington National Forest, as appropriate. The consulting parties may examine any Project report submitted to the WVSHPO by contacting the FHWA in order to obtain a copy of a Project report. Project reports distributed to the consulting parties, with the exception of the Monongahela National Forest and the George Washington National Forest, will not include archaeological location specific information (e.g., UTM coordinates, station markers, and mapping). The consulting parties shall have 30 days from receipt to provide comments to FHWA.

E. The WVDOT shall provide two copies of all final reports to the WVSHPO in accordance with the WVSHPO's guidelines for surveys. One copy of the report will include original photographs or halftones and will be on acid free paper. Any completed site forms will also be on acid free paper when sent to the WVSHPO.

## **IX. FUTURE COOPERATION WITH VASHPO**

FHWA will ensure that the appropriate level of review with the VASHPO is conducted if it is determined that the Project will impact that state's historic properties.

## **X. Public Participation**

A. FHWA will ensure that an active public participation program is carried out. In addition to promptly notifying all consulting parties of the availability of the Determination of Eligibility, Management Summary and Archaeological reports, these reports will be made available for review to interested persons and the general public at the FHWA West Virginia Division Office and the WVSHPO. The views of consulting parties, interested persons and the general public will be considered in the determination of appropriate actions to avoid, minimize or mitigate adverse effects to historic properties. The Report Submission Schedule and Review Responsibilities for these actions are further detailed in section III F. of this agreement.

B. As stated in Section 304(16U.S.C. 470w-3) of the National Historic Preservation Act of 1966, as amended, the signatories to this Agreement and participating consulting parties will withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if it is determined that disclosure may (1) cause a significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede the use of a traditional religious site by practitioners.

C. Under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470hh), the signatories to this Agreement and participating consulting parties will withhold from disclosure to the public, information concerning the nature and location of any Archaeological resource located on public lands for which the excavation or removal requires a permit or other permission.

D. The FHWA, the WVDOT and the WVSHPO reserve the right to restrict information concerning the location, character, or ownership of a historic resource as stipulated in the West Virginia Code, Chapter 29 B, Article 1.

E. Prior to construction, FHWA will investigate the cultural affiliation of various Native American groups that may have inhabited the vicinity at various times during the prehistoric and protohistoric periods. All Native American groups which have the potential to be culturally affiliated with the vicinity will be notified of the potential to discover human remains, FHWA will contact the West Virginia Council on American Indian Burial Rights, Inc., as an Interested Party, regarding the discovery or excavation of any Native American remains encountered during archaeological monitoring.

F. FHWA will provide the selected Native American groups with a draft treatment plan section by section and request their comments. The plan describes FHWA efforts regarding the avoidance or preservation in place of the remains, the excavation of the remains, the scientific testing of the remains, and the determination of the repatriation or reburial of the remains.

## **XI. Amendments to Programmatic Agreement**

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such amendment.

## **XII. Dispute Resolution**

A. Should any party object to any documentation completed or actions proposed pursuant to this agreement FHWA will, within 30 calendar days, consult in good faith with the appropriate parties to resolve the dispute. If the FHWA determines that the dispute cannot be resolved, the FHWA will forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

1. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or
2. Notify the FHWA that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Part 800.6(c)(2) with reference to the subject of the dispute.

B. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The FHWA responsibility to carry out all actions under the agreement that are not the subjects of the dispute will remain unchanged. If the Council fails to pursue either Stipulation VII or VIII.B, as listed above, within the 30 calendar days mentioned, the FHWA may proceed with its plans.

## **XIII. Monitoring**

The Council and the WVSHPO may have access to activities carried out pursuant to this Agreement, and the Council will review such activities if so requested. The FHWA will cooperate with the Council and the WVSHPO in carrying out their monitoring and review responsibilities.

Execution of this agreement and implementation of its terms evidence that the FHWA has taken into account the effects of the Appalachian Corridor H Project on historic properties and has afforded the Council the opportunity to comment on the Project and its effects on historic properties.

PROGRAMMATIC AGREEMENT  
APPALACHIAN CORRIDOR H  
ELKINS TO THE WEST VIRGINIA/VIRGINIA STATE LINE

FEDERAL HIGHWAY ADMINISTRATION

BY: David E. Bender 10/6/95  
David E. Bender, Division Administrator Date

WEST VIRGINIA STATE HISTORIC  
PRESERVATION OFFICER

BY: William G. Farrar 10/5/95  
William G. Farrar, Deputy Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Cathryn B. Slater 11-8-95  
Cathryn B. Slater, Chairman Date

CONCUR:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: Fred VanKirk 10/5/95  
Fred VanKirk, Secretary/Commissioner Date

CONCUR:

MONONGAHELA NATIONAL FOREST

BY: Jim Page 10/9/95  
Jim Page, Forest Supervisor Date

CONCUR:

GEORGE WASHINGTON NATIONAL FOREST

BY: William Darnon 10/12/95  
William Darnon, Forest Supervisor Date





U.S. Department  
of Transportation

Federal Highway  
Administration

West Virginia Division

Geary Plaza, Suite 200  
700 Washington Street, East  
Charleston, West Virginia 25301  
(304) 347-5928

August 7, 2000

IN REPLY REFER TO:

Federal Project APD-0484(059)  
State Project X142-H-38.99  
Appalachian Corridor H  
Programmatic Agreement - Amendment



Randolph T. Epperly, Jr., P.E.  
Deputy State Highway Engineer-  
Project Development  
West Virginia Division of Highways  
Charleston, West Virginia 25305

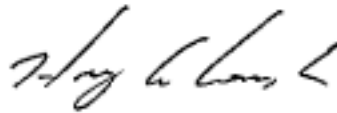
Dear Mr. Epperly:

As required by the Corridor H Settlement Agreement, by letter dated May 1, 2000, the Federal Highway Administration (FHWA) submitted to the Advisory Council on Historic Preservation (ACHP) a proposed Amendment to the existing Corridor H Programmatic Agreement. The purpose of the Amendment was to revise the project designations in Appendix A of the agreement. By e-mail dated July 28, 2000, the ACHP concurred in the proposed revision. By letter dated August 7, 2000, the FHWA forwarded a copy of the revised Appendix to the ACHP to confirm our agreement. In addition, a copy of the revised Appendix has been provided to the Forest Supervisors of the Monongahela National Forest and the George Washington National Forest (signatories to the Programmatic Agreement). The FHWA also forwarded copies of the revised Appendix, and all other pertinent correspondence between the FHWA and ACHP regarding the proposed amendment, to all seventeen (17) parties identified in Exhibit 5 (List of Plaintiff Contacts) of the Corridor H Settlement Agreement via the Return-Receipt Delivery to Plaintiffs procedure. As described in our May 1 letter to the ACHP, all future submissions of either Criteria of Effects (COE) reports or Mitigation Plans should be developed in accordance with the revised project designations (with exception to the Lahman House and Hott House). If needed, the COE report for the Lahman House (formerly in Section 7) will be submitted to the ACHP as an independent submission. The Mitigation Plan for the Hott House will be submitted to the ACHP at the same time other resources within former Section 3 are submitted; however, FHWA will request that the Hott House be reviewed independently of the other resources.

Enclosed for your information is a copy of the letter sent to each of the twenty (20) parties contacted by the FHWA. In order to complete the amendment process, the FHWA is requesting the West Virginia Division of Highways forward to the West Virginia State Historic Preservation Officer a copy of our

August 7 letter transmitting the revised Appendix to the ACHP. If you have any questions or comments concerning this information, please contact me at (304) 347-5268 or via e-mail at [Henry.Compton@fhwa.dot.gov](mailto:Henry.Compton@fhwa.dot.gov).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry E. Compton". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

Henry E. Compton, P.E.  
Right of Way & Environment Specialist

Enclosures

## APPENDIX A: PROJECT SECTION DESCRIPTIONS

PROJECT	WESTERN TERMINUS	EASTERN TERMINUS	LENGTH (Approx.)
Elkins to Kerens	Elkins (at the terminus of the Northern Elkins Bypass, 0.55 miles east of County 11)	Kerens (0.2 miles north of County Route 7)	5.5 miles
Kerens to Parsons	Kerens (0.2 miles north of County Route 7)	Parsons (at County Route 219/4, 0.2 miles south of the northernmost point at which County Route 219/4 intersects with US Route 219)	13.5 miles
Parsons to Davis	Parsons (at County Route 219/4, 0.2 miles south of the northernmost point at which County Route 219/4 intersects with US Route 219)	Davis (at WV Route 93, 0.7 miles east of WV Route 32)	9.0 miles
Davis to Bismarck	Davis (at WV Route 93, 0.7 miles east of WV Route 32)	Bismarck (at WV Route 42, 0.4 miles south of the intersection with Route 42/93)	16.5 miles
Bismarck to Forman	Bismarck (at WV Route 42, 0.4 miles south of the intersection with Route 42/93)	Forman (at County Route 5, near Thorn Run)	9.5 miles
Forman to Moorefield	Forman (at County Route 5, near Thorn Run)	Moorefield (at County Route 15, 0.5 miles west of WV Route 55)	16.0 miles
Moorefield to Baker	Moorefield (at County Route 15, 0.5 miles west of WV Route 55)	Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55)	14.0 miles
Baker to Wardensville	Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55)	Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259)	7.0 miles
Wardensville to Virginia State Line	Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259)	Virginia Line (a point on WV Route 55 approximately 100 feet west of the West Virginia/Virginia state line)	5.5 miles