

**Programmatic Agreement  
Among the Federal Highway Administration,  
The Advisory Council on Historic Preservation,  
The Delaware State Historic Preservation Officer, and  
The Delaware Department of Transportation  
Regarding  
The Implementation of the Federal-Aid Highway Program in Delaware**

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July 1, 2025 DRAFT

**WHEREAS**, the Federal Highway Administration (FHWA), administers the Federal-Aid Highway Program (Program) in the State of Delaware authorized by 23 United States Code (U.S.C.) § 101 et seq., through the Delaware Department of Transportation (DelDOT) (23 U.S.C. § 315); and

**WHEREAS**, the Delaware FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Program in the State of Delaware complies with Sections 106 and 110 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108 and 306102, respectively), as amended, and codified in its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800, as amended (August 5, 2004); and

**WHEREAS**, DelDOT administers Federal-Aid projects throughout the State of Delaware as authorized by 23 U.S.C. § 302, has participated in the consultation for the development of this Programmatic Agreement (Agreement), and is an invited signatory to this Agreement; and

**WHEREAS**, the responsibilities of the Delaware State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

**WHEREAS**, FHWA has invited the Advisory Council on Historic Preservation (ACHP) to participate in development of this Agreement and ACHP has accepted to become an invited signatory of this Agreement; and

**WHEREAS**, FHWA has determined that implementation of the Program in Delaware may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with SHPO and ACHP pursuant to 36 CFR § 800.14(b); and

**WHEREAS**, FHWA has contacted the following Federally recognized Tribes (Tribes) with ancestral ties to Delaware, which may attach religious or cultural significance to historic properties in Delaware, provided them the opportunity to consult and to concur with this Agreement: the Delaware Nation, and the Delaware Tribe of Indians and **NEED TO INCLUDE OUTCOME OF CONSULTATION**; and

**WHEREAS**, pursuant to the consultation conducted under 36 CFR § 800.14(b), the signatories have developed this Agreement to establish an efficient and effective program alternative for

considering the effects of the Program on historic properties in the State of Delaware and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

**WHEREAS**, the signatories to this Agreement are also referred to as parties to this Agreement within this document; and

**WHEREAS**, DelDOT, on behalf of FHWA has contacted the following parties pursuant to 36 CFR § 800.2(c)(5) regarding this Agreement, has requested their comments, and has taken any comments received into account: local government and private historic preservation interests, including preservation planners from New Castle County, Sussex County, and the City of Wilmington; planners from Kent County; Nanticoke Indian Tribe/Nanticoke Indian Association; Lenape Indian Tribe of Delaware; the Archaeological Society of Delaware; and Preservation Delaware, Inc. The following parties participated in the consultation: **NEED TO INCLUDE OUTCOME OF CONSULTATION**; and

**WHEREAS**, DelDOT, on behalf of FHWA, has notified the public to review and provide comments on this Agreement through Public Notices and has taken any comments received into account; and

**WHEREAS**, the definitions given in Appendix C are applicable throughout this Agreement; and

**WHEREAS**, this Agreement supersedes all previous Programmatic Agreements among FHWA, ACHP, SHPO, and DelDOT, specifically the *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Delaware Department of Transportation, and the Delaware State Historic Preservation Officer Regarding the Implementation of the Federal Aid Highway Program in Delaware*, executed September 27, 2018 and corresponding amendments, dated September 27, 2023, and September 27, 2024; and

**NOW, THEREFORE**, FHWA, ACHP, SHPO, and DelDOT agree that the Program shall be carried out in accordance with the following Stipulations in order to take into account the effects of the Program on historic properties in the State of Delaware and that these Stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires or is terminated.

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APPENDIX A: Project Types with Minimal Potential to Affect Historic Properties\_and\_Email Template for Projects with Minimal Potential to Affect Historic Properties

APPENDIX B: Project Types with Minimal Potential to Adversely Affect Historic Properties and\_Finding of No Historic Properties Affected Tracking Form\_and\_Proposed Finding of No Adverse Effect Form

APPENDIX C: Definitions for Programmatic Agreement on the Federal-Aid Highway Program

APPENDIX D: Internal Review and Consultation Process

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APPENDIX F: DelDOT Historic Bridge Criteria for Determining Significance

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ATTACHMENT A: Unmarked Human Burials and Human Skeletal Remains Act (Del. Code Title 7 Ch. 54)

ATTACHMENT B: Delaware Nation Unanticipated Discoveries Policy

## STIPULATIONS

FHWA, with the assistance of DelDOT, shall ensure that the following measures are carried out:

### **I. Purpose and Scope**

- A. This Agreement sets forth the process by which FHWA, with the assistance of DelDOT, will meet its responsibilities for undertakings pursuant to Sections 106 and 110 of the NHPA.
- B. All review periods are 30 calendar days, unless otherwise noted, starting on the day the complete documentation is provided. Unless otherwise agreed upon by the parties, failure to respond will be understood as concurrence and consultation will proceed as such.

### **II. Responsibilities**

#### **A. FHWA Responsibilities**

In compliance with its responsibilities under the NHPA, and as a condition of its award to DelDOT of any assistance under the Federal-Aid Highway Program, FHWA will ensure that DelDOT carries out the requirements of 36 CFR Part 800 and applicable ACHP guidance, the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act (48 CFR 44738-9), and applicable Division of Historical and Cultural Affairs (HCA) guidelines such as but not limited to "Architectural Survey in Delaware" (2015) and "Archaeological Survey in Delaware" (2015), or their successors, for undertakings subject to this Agreement.

1. FHWA recognizes that it has a unique legal relationship with Tribes and retains the responsibility for government-to-government consultation with the Tribes as defined in 36 CFR § 800.16(m).
2. FHWA retains the responsibility to notify ACHP of adverse effects, as per 36 CFR § 800.6(a)(1).
3. FHWA will participate in the annual meeting as described in Stipulation XIX.C to evaluate implementation of this Agreement.

#### **B. ACHP Responsibilities**

1. ACHP will be notified of findings of adverse effect by FHWA and will be invited to participate in resolving the adverse effect of an undertaking in accordance with 36 CFR § 800.6(a)(1).
2. ACHP will participate in the resolution of disputes that may occur through the implementation of this Agreement as stipulated.
3. ACHP will attend, at their discretion, the annual meeting as described in Stipulation XIX.C to evaluate implementation of this Agreement.

### C. SHPO Responsibilities

1. SHPO will assist DelDOT and as needed, FHWA, with defining the Area of Potential Effects (APE), on the identification of historic properties, evaluation of National Register eligibility, assessment of effects, resolution of adverse effects, and development of mitigation measures according to the terms of this Agreement. SHPO will participate in consultation with other Section 106 consulting parties.
2. SHPO will share information with DelDOT and FHWA as it develops or generates data related to the identification, evaluation, management, and treatment of the State's cultural resources.
3. SHPO will participate in the annual meeting as described in Stipulation XIX.C to evaluate implementation of this Agreement.

### D. DelDOT Responsibilities

1. Implementation of this Agreement is conditioned upon DelDOT employing staff meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61, Appendix A) in the areas of architectural history, archaeology, and/or any other closely related field as appropriate, hereafter referred to as "DelDOT qualified staff." If DelDOT at any time has a staff vacancy in one of the above-cited fields, DelDOT shall:
  - a. Consult with SHPO on all projects defined under Stipulations IV, V, and VI with regard to identification, evaluation, and assessment of effects on the resource type for which the vacancy exists; or
  - b. DelDOT may use consultant staff who have been verified by SHPO as meeting the Professional Qualifications Standards to assume the role of DelDOT qualified staff in a temporary capacity, which is defined as two (2) years. Consultant staff may be used for a longer period, if necessary, provided that DelDOT obtains the written approval of FHWA and SHPO.
2. Consistent with 36 CFR § 800.2(a)(3), DelDOT may use consultants to gather information, analyze data, and prepare documentation. DelDOT and FHWA remain responsible for all consultation, findings and determinations made under this Agreement.
3. DelDOT will ensure that all cultural resource work conducted under this Agreement is carried out by DelDOT qualified staff and/or consultants that meet the qualifications set forth in the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61, Appendix A) for such work.
4. DelDOT shall be responsible for carrying out Section 106 responsibilities as specified in Stipulations IV, V, and VI.
5. DelDOT shall identify other parties as described in 36 CFR Part 800.2(c)(5) to participate in Section 106 consultation. In consultation with SHPO, additional consulting parties may be identified. DelDOT will transmit to FHWA recommendations of and requests for consulting party status along with their recommendations for FHWA to consider and approve in a case-by-case basis pursuant to 36 CFR § 800.3(f)(3). Upon the approval of FHWA, DelDOT shall

request in writing for consulting parties to confirm their status as participants in the Section 106 process.

6. DelDOT shall ensure that all project related cultural resource commitments are entered and saved into the Environmental Commitments Tracker within Primavera Unifier or its successor and use this tool to ensure fulfillment of such commitments.

E. Training

1. FHWA, SHPO, and DelDOT personnel, including but not limited to qualified cultural resource staff and DelDOT's Environmental Stewardship Manager, shall undertake Section 106 training. Such trainings may be provided by the ACHP, National Preservation Institute, National Park Service, and others as found appropriate. The parties will also consult on other training that may be beneficial to the purposes of carrying out this Agreement and will participate in such training if funding allows.
2. FHWA, SHPO, and DelDOT shall ensure that all staff of their respective agencies who have responsibilities for carrying out provisions of this Agreement are provided an overview of this Agreement and are instructed in its application.

### **III. Consultation with Tribes**

- A. FHWA shall retain responsibility for complying with all federal requirements pertaining to government-to-government consultation with the Tribes.
- B. DelDOT shall make a reasonable and good faith effort to identify projects where the Tribes might attach religious and cultural significance to historic properties in the APE of an undertaking and FHWA shall invite them to be consulting parties in accordance with the requirements of 36 CFR Part 800.
- C. DelDOT shall provide FHWA information from which FHWA can initiate consultation with the Tribes early in the project design process to identify cultural, confidentiality, and/or other concerns and to allow adequate time for consideration.
- D. FHWA shall ensure that consultation continues with the Tribes throughout the Section 106 consultation process whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking. FHWA will be responsible for conducting day-to-day project specific coordination of information to the Tribes and will request assistance as needed from DelDOT and SHPO.
- E. FHWA shall provide DelDOT and SHPO with all copies of tribal correspondence unless a Tribe requests otherwise.

### **IV. Projects With Minimal Potential to Affect Historic Properties**

- A. Project Types: The types of undertakings listed in Appendix A are activities for which DelDOT routinely utilizes Federal-Aid Highway funds. Due to their low potential to affect historic properties, the activities listed in Appendix A have been determined to cause no effect to historic properties and are exempted from further review by SHPO, provided the undertaking is limited to the activity specified, is not part of a larger undertaking, and is on an existing transportation facility. Should DelDOT want to add

additional activities to the list in Appendix A, DelDOT may propose to amend the Appendix per Stipulation XXI.

- B. Review: DelDOT qualified staff will perform a desk review (Appendix E) and determine whether a particular project meets the exemption categories listed in Appendix A.
- C. Documentation: For projects which are limited to the activities listed in Appendix A, DelDOT qualified staff shall document its finding that the action is exempt from further review and maintain the documentation in its files using the Projects with Minimal Potential to Affect Historic Properties Email Template included, in Appendix A of this Agreement. Documentation will include Contract number and name, project location, a description of the work involved and its physical extent, any recorded historic resources in the vicinity, the type of project under this Stipulation, and the location where the record is filed.

## **V. Projects with Minimal Potential to Adversely Affect Historic Properties**

- A. Project Types: The types of undertakings listed in Appendix B are activities for which DelDOT routinely utilizes Federal-Aid Highway funds. These undertakings generally do not adversely affect historic properties. To qualify for review under this Stipulation, the undertaking must be limited to the activities specified in Appendix B, not part of or segmented from a larger undertaking, and on existing transportation facilities, as determined by DelDOT qualified staff. These types of undertakings shall not usually require Section 106 consultation with SHPO, except as provided for in Stipulation V.B. Should DelDOT want to add additional activities to the list in Appendix B, DelDOT may propose to amend the Appendix per Stipulation XXI.
- B. Review and Documentation: DelDOT qualified staff shall identify and determine an APE, as defined in Appendix C of this Agreement, then make a reasonable and good faith effort to identify historic properties, in keeping with the provisions of 36 CFR Part 800.4. If DelDOT qualified staff contract for or conduct an identification and/or evaluation survey for a project subject to this Stipulation, DelDOT shall inform SHPO of the results of the survey, in accordance with the requirements of Stipulation VI of this Agreement, and request SHPO concurrence on findings and determinations. If SHPO fails to respond within 30 days of receipt of adequately documented findings or determinations, DelDOT may assume concurrence and proceed.
  - 1. If DelDOT qualified staff after a desk review (Appendix E) and/or survey find that there are no historic properties in the APE, the DelDOT qualified staff shall complete the Finding of No Historic Properties Affected tracking form included in Appendix B of this Agreement and proceed with the undertaking.
  - 2. If DelDOT qualified staff after a desk review (Appendix E) and/or survey find that a NRHP eligible or listed historic property is located within the APE of the undertaking, DelDOT shall:
    - a. Determine if the undertaking will affect the property, as defined in 36 CFR § 800.16(i), and
      - i. If DelDOT finds that the property will not be affected, then its qualified staff shall complete the Finding of No Historic Properties Affected

tracking form included in Appendix B of this Agreement and proceed with the undertaking. DelDOT may also use this form to document its intent to make a finding of *de minimis* impact and/or an exception to Section 4(f) determination in accordance with 23 CFR 774, as applicable.

- ii. If DelDOT finds that the property will be affected, then DelDOT shall notify SHPO and other consulting parties, describing any standard provisions that could be applied that would avoid adverse effects using the Proposed Finding of No Adverse Effect form, included in Appendix B of this Agreement. DelDOT may proceed with the undertaking if SHPO and other consulting parties agree that the provisions are sufficient, or do not comment within 30 days of receiving the adequately documented notification. Then the project will be considered to have No Adverse Effect on historic properties provided that DelDOT implements the aforementioned standard provisions. If the parties do not agree, then the parties shall consult in accordance with Stipulation VI.D of this Agreement.
  - iii. If DelDOT anticipates that the property could be adversely affected, DelDOT shall proceed with consultation in accordance with Stipulation VI of this Agreement.
- b. If DelDOT's qualified staff makes a finding of "no adverse effect" as defined in 36 CFR Part 800.5, under Stipulation V.B.2.a.ii, then DelDOT may, as applicable, indicate that it intends to make a finding of *de minimis* impact and/or an exception to Section 4(f) determination on the Proposed Finding of No Adverse Effect form.

## **VI. Projects Subject to SHPO Review**

For those undertakings not exempt from SHPO review under the terms of Stipulations IV and V, the process set forth in 36 CFR Parts 800.3 to 800.6 shall be followed with DelDOT acting as the Agency Official except where otherwise noted:

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

DelDOT qualified staff is responsible for establishing the undertaking, defining the APE, and initiating consultation with SHPO. DelDOT shall, in consultation with SHPO, define the APE and as per Stipulation II.D.5 identify other appropriate parties (such as local governments) to participate in the consultation. After the APE has been defined, DelDOT shall request FHWA to initiate consultation with appropriate Tribes. With FHWA approval, DelDOT shall invite other appropriate parties to participate in the consultation.
- B. **Identification of Historic Properties – 36 CFR Part 800.4**

DelDOT qualified staff is responsible for identifying historic properties, including landscapes, traditional cultural places and those properties of religious and cultural significance to the Tribes, within the APE, and evaluating the eligibility of historic properties for the NRHP. DelDOT shall ensure that these activities are carried out in accordance with the latest guidelines issued by the HCA and in consultation with SHPO



and any other consulting parties, in accordance with 36 CFR Part 800.4 and the Internal Review and Consultation Process outlined in Appendix D.

C. Finding of No Historic Properties Affected – 36 CFR Part 800.4 (d)(1)

If a cultural resource survey is conducted as part of the process to identify historic properties, all cultural resource reports generated for the project, must have SHPO concurrence and be finalized, along with any associated data coordination, before DelDOT can submit a finding of No Historic Properties Affected.

1. If DelDOT, in consultation with SHPO, finds that either there are no historic properties present or that there are historic properties present within the APE, but the undertaking will have no effect on them as defined in 36 CFR § 800.16(i), DelDOT shall document the finding of No Historic Properties Affected as provided for in 36 CFR § 800.11(d) and summarize the consultation(s) supporting that finding. DelDOT shall provide the documentation to FHWA, SHPO, and any other consulting parties as a notice requiring no response from SHPO. DelDOT will allow 30 days for potential objection to such a finding notice before proceeding with the undertaking.
2. Under the following conditions, DelDOT will request the written concurrence of SHPO on findings of No Historic Properties Affected before proceeding with the undertaking:
  - a. When there is public controversy on historic preservation issues,
  - b. When Tribes and/or consulting parties are actively consulting on a project and have concerns,
  - c. When DelDOT has not finalized all cultural resource survey and eligibility reports for the project,
  - d. When a signatory makes a request in writing prior to the submittal of the No Historic Properties Affected finding.

D. Assessment of Adverse Effects – 36 CFR Part 800.5

1. If DelDOT determines, and SHPO concurs, that historic properties will be affected by the undertaking, DelDOT shall apply the Criteria of Adverse Effect, 36 CFR § 800.5(a)(1). If DelDOT determines that the undertaking will have no adverse effect on historic properties, it will notify SHPO and other consulting parties in writing with supporting documentation as required by 36 CFR § 800.11 (e). SHPO will review this determination and provide written comments to DelDOT within 30 calendar days after receipt of DelDOT's documentation. If neither the SHPO nor another consulting party objects to DelDOT's no adverse effect determination, DelDOT shall document that finding, make it available to the public upon request (per Stipulation VII), and may then proceed with the undertaking as planned. If the SHPO or another consulting party objects to the DelDOT's finding, DelDOT shall attempt to resolve the objection through consultation.
  - a. DelDOT shall respond in writing within 30 days of the objection. If the objecting party requests such, DelDOT shall set up a meeting to resolve the objection.

- b. If the objection cannot be resolved, DelDOT will refer the objection to FHWA, and consultation will continue. If the objection cannot be resolved, FHWA shall follow the process outlined in 36 CFR § 800.5(c)(2).
2. If DelDOT in consultation with SHPO determines that the undertaking shall have an adverse effect on historic properties, DelDOT shall notify FHWA and, other consulting parties if any, and FHWA shall notify ACHP. Consultation shall proceed in accordance with 36 CFR Part 800.6.

## **VII. Public Participation**

DelDOT shall, through opportunities afforded by DelDOT's project development process, seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects to historic properties and confidentiality concerns of private individuals and businesses. DelDOT will use existing procedures to solicit public participation early in the project development process and consistent with 36 CFR § 800.2 (d).

## **VIII. Change in Nature or Scope of Undertaking**

If, after conclusion of the processes outlined in Stipulations IV, V, and VI of this Agreement, any undertaking is modified in a manner that substantially changes the undertaking's methods, materials, footprint, or design, DelDOT shall consult with SHPO and other consulting parties to reassess the appropriateness of the initial findings and determinations. If there is disagreement, consultation will continue under Stipulation VI of this Agreement.

## **IX. Treatment of Human Remains and Burials**

- A. All actions involving human remains are subject to applicable federal and state burial laws including the Native American Graves Protection and Repatriation Act (NAGPRA) when on federal lands.
- B. In the event of an inadvertent discovery of human remains or funerary objects on state or private land, the procedures outlined in Delaware's Unmarked Human Burials and Human Skeletal Remains Act (Attachment A) will be followed.
- C. The Delaware Nation and the Delaware Tribe have their own protocols for the unexpected discovery of human remains. DelDOT will make every effort to comply with applicable protocols outlined in Attachment B. If other tribal protocols for the unexpected discovery of human remains are presented during the unexpected discovery, FHWA shall consult with the Tribes and determine which protocol to follow.

## **X. Post Review Discoveries**

- A. Planning for Subsequent Discoveries

When DelDOT's identification efforts indicate that historic properties are likely to be discovered during implementation of an action, DelDOT will coordinate with SHPO and identified consulting parties to develop a plan for discovery of such properties to include in design plans, or any other environmental document, contract, or specifications. FHWA will concurrently coordinate with the Tribes. Implementation of the plan as originally

proposed or modified as necessary owing to the nature and extent of the historic properties discovered, will be in accordance with 36 CFR Part 800.4 through 36 CFR Part 800.6.

**B. Inadvertent Discoveries**

If previously unidentified historic properties, or unanticipated effects on historic properties, are discovered after DelDOT has completed its review under this Agreement, the procedures for Post Review Discoveries (Appendix G) will be followed.

**XI. Disposal Site Review**

In order to protect historic properties that are may be affected by project activities, but are not included as part of the Area of Potential Effects (APE), proposed locations for disposal of project generated material is reviewed prior to acceptance. The Stipulated Environmental Statements that are part of project bid package require that proposed locations are reviewed by DelDOT and found suitable for use. The review includes the DelDOT qualified staff to assess the potential for effects to historic properties.

**XII. Re-Evaluation of Findings**

DelDOT shall re-evaluate all Section 106 findings and determinations under this Agreement for projects that have not been funded for construction within five (5) years following completion of the Section 106 review process. The re-evaluation shall establish whether the findings and documentation concerning the undertaking remain accurate or if the undertaking will go through Section 106 review again, in accordance with the terms of this Agreement.

**XIII. Emergency Undertakings**

As defined in 36 CFR Part 800.12, an emergency undertaking is an essential and immediate response to a disaster or emergency formally declared by the President or Governor; such undertakings can be separated into two categories which shall be addressed as follows:

- A. Undertakings that will be implemented within thirty (30) days after the formal declaration of the disaster or emergency: DelDOT qualified staff shall immediately determine if the emergency response could affect the physical integrity, character and/or use of historic properties. If so, DelDOT shall notify FHWA, SHPO and ACHP within 48 hours. The parties will then consult, review and comment on the emergency undertaking, as soon as possible to determine how to, as fully as practicable under the circumstances, avoid, minimize and/or mitigate for any potential adverse effects to historic properties. Nothing in this Agreement shall be construed as prohibiting DelDOT from taking such actions as it deems necessary to stabilize the situation to protect the safety of the travelling public.
- B. Immediate rescue and salvage operations conducted to preserve life or property such as necessitated by natural disaster or other catastrophic events are exempt from the provisions of Section 106 and this Agreement, in accordance with 36 CFR § 800.12(d).

#### **XIV. Curation of Archaeological Materials**

All objects of historical or archaeological value or interest found on archaeological sites owned or controlled by the State and related records resulting from research, surveys and excavation under this Agreement (Collections) shall be curated at HCA, or its designee, following the policies of the institution. 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 HCA's "[Guidelines and Standards for the Curation of Archaeological Collections](#)" (2025) or its successor. DelDOT shall comply with any additional state regulations regarding curation of archaeological materials, including any fees that may be assessed.

#### **XV. Preservation of Historic Properties in DelDOT Ownership**

This Stipulation applies only to property acquired with the use of federal funds as part of a federally funded project administered under this Agreement, when through consultation the parties have agreed that preservation in place is the preferred treatment.

- A. DelDOT, in consultation with FHWA and SHPO, and ACHP if participating, will develop appropriate legal instruments such as, but not limited to, preservation easements, preservation covenants, or deed restrictions for historic properties DelDOT acquires or uses in association with undertakings subject to this Agreement, to ensure protection from future actions or to ensure appropriate treatment.
- B. FHWA, SHPO, DelDOT, and ACHP if participating in the consultation, shall determine the need for and negotiate the terms of any legal instruments that would ensure long-term preservation or protection of the historic properties. Any such legal instrument shall include, at a minimum, the following elements:
  1. Baseline documentation to document the existing conditions of the property and significant features; and
  2. A clearly defined list of allowed uses and prohibited uses of the site; and
  3. For standing structures, a mechanism for periodic monitoring of the site to ensure that protection measures are being appropriately implemented and maintained; and
  4. An acknowledgement that protection measures are being instituted in order to minimize or mitigate the Project's adverse effects to a historic property; and
  5. A prohibition on any party, its successors, heirs or assigns, from terminating, modifying, altering or otherwise setting aside any such legal instrument unless the party, prior to taking such action: first provides the signatories to this Agreement with written justification for termination; then consults with the signatories to develop a new treatment plan to address the adverse effects pursuant to 36 CFR Part 800.5, regardless of whether the term of this Agreement has expired or not; and finally obtains the signatories' written concurrence on the plan.
- C. DelDOT shall maintain an inventory of all properties protected by legal preservation instruments and shall make that inventory available to SHPO upon request.
- D. DelDOT shall commit to annually monitor all properties protected by legal preservation instruments and shall provide a status report annually as described in Stipulation XIX.B.

- E. Should the terms of any legal preservation easement be violated, DelDOT shall immediately inform FHWA and SHPO. All parties shall consult to determine any effects to historic properties and if any additional mitigation is required.

## **XVI. Residual Right-of-Way**

Occasionally property is acquired in excess of what is needed for operational right-of-way and associated design requirements (e.g., land-locked parcels). In these cases, should the need or desire arise to dispose of this excess right-of-way (to be leased, transferred, or sold), archaeological surveys and/or preservation covenants for that subject parcel will first be considered by DelDOT, FHWA, SHPO, and ACHP if participating in the consultation, before DelDOT takes any action to divest itself from such lands. The parties will determine if the subject parcel(s) contains, or has the potential to contain, any historic properties.

On the occasion that DelDOT determines it is in the department and state's best interest to dispose of such property, DelDOT shall notify all signatories to this Agreement of their intent in writing. The letter will include a description and location of the parcel, federal project associated with the department's acquisition, an assessment of historic sensitivity, proposed use of the property by the grantee, and a request for concurrence or recommendation of additional steps (e.g., archaeological survey). Signatories are required to respond in writing and request a meeting if desired to discuss the action.

Should an archaeological survey be determined necessary, DelDOT shall conduct or oversee grantee investigation and reporting. Responding signatories will be sent a copy of the report for review and comment. Once all parties are satisfied that the transfer of the property and its use will not affect a historic property the disposition of it will proceed.

If resources are identified the signatories will agree to add a covenant or other protective measures to protect the resource(s), whether or not the property is transferred. Any such legal instrument shall include, at a minimum, the elements described in Stipulation XV.B of this Agreement. This will adequately address any reasonably foreseeable adverse effects that could occur due to transfer, lease, or sale of property purchased with Federal funds out of State ownership or control without adequate and legally enforceable restrictions to ensure long-term preservation (or mitigation) of historic properties (36 CFR § 800.5(a)(2)(vii)).

## **XVII. Historic Bridges**

- A. In order to identify and address the needs of historic bridges in the State and, as much as practical, to preserve their significant character and ensure their long-term preservation, DelDOT commits to the following procedures when a bridge, older than 45 years, is present in the APE of an undertaking not listed in Appendix A:
  1. If a bridge has been previously evaluated, and the determination of eligibility is older than 10 years, DelDOT, in consultation with SHPO, will reevaluate the bridge using the criteria provided in the DelDOT Historic Bridge Criteria for Determining Significance (Appendix F).
  2. If a bridge has never been evaluated and is not exempt under the Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945

Concrete and Steel Bridges, then DelDOT, in consultation with SHPO, will evaluate the bridge using the criteria provided in DelDOT's Historic Bridge Criteria for Determining Significance (Appendix F).

- B. The signatories will consider developing new contexts and/or reports for historic bridges as needs are identified.

### **XVIII. Cultural Resource Planning Studies**

DelDOT, in consultation with SHPO, commits to assist in creating, reviewing, and/or updating historic contexts based on a synthesis of information obtained from DelDOT projects and other related information.

### **XIX. Review and Monitoring of the Agreement**

- A. DelDOT shall maintain documentation on the project and tracking forms for undertakings reviewed under Stipulations IV and V of this Agreement in the project general file. DelDOT will submit annually to FHWA and SHPO copies of completed tracking forms provided for under this Agreement.
- B. DelDOT shall prepare and provide to all parties to this Agreement an annual report by calendar year addressing activities undertaken during the year by DelDOT staff, any of their training, and public outreach. The report will include the number of projects reviewed under Stipulations IV and V of this Agreement and their breakdown by Project Type along with completed findings under Stipulation VI. In addition, the report will provide the results of monitoring the properties protected by legal preservation instruments as per Stipulation XV of this Agreement and disposal of residual right-of-way actions as per Stipulation XVI. The report will also provide updates for commitments stipulated in memoranda of agreement and project programmatic agreements and expiration or extension status. The report shall be submitted to FHWA, ACHP, and SHPO on or before March 1 of the following year.
- C. Within 30 days of submitting the annual report, DelDOT shall invite FHWA, ACHP, and SHPO to meet to discuss the report and the implementation of the terms of this Agreement. At least FHWA, SHPO, and DelDOT will meet to discuss the report within 60 days of its submittal.
- D. ACHP and SHPO, at any time, may monitor, review, and audit the delegated activities carried out pursuant to this Agreement. FHWA and DelDOT shall cooperate with ACHP and SHPO in carrying out their monitoring and review responsibilities.

### **XX. Resolving Objections to Implementation of this Agreement**

- A. Should any signatory party object in writing to FHWA regarding the manner in which the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.

- B. Should any signatory party object to a DelDOT or FHWA determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.
- C. If the objection is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
- D. 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 ACHP and other signatory parties, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
  - 1. Advise FHWA that ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection; accordingly, or
  - 2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - 3. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA shall ensure that the Agency Official is prepared to take the resulting comments into account in accordance with 36 CFR § 800.7(c)(4).
- E. Should ACHP not exercise one of the foregoing options within 30 days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
- F. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
- G. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
- H. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
- I. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the

action subject to dispute hereunder to proceed in accordance with the terms of that decision.

## **XXI. Amendment**

- A. Any signatory party to this Agreement may at any time propose amendments to the body of the agreement or any appendices, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.
- B. Each attachment to this Agreement may be individually amended through consultation of the signatory parties without requiring amendment of the Agreement, unless the signatory parties through such consultation decide otherwise.

## **XXII. Termination**

- A. Any signatory party may terminate this agreement. If this Agreement is not amended as provided for in Stipulation XXI, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with the other parties for no more than 30 days to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, the signatory parties shall proceed in accordance with that agreement.
- C. Should such consultation fail, the signatory party proposing termination may terminate this Agreement by promptly notifying the other parties in writing.
- D. Should this Agreement be terminated, FHWA would carry out the requirements of 36 CFR Part 800 for individual undertakings.
- E. Beginning with the date of termination, FHWA shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 CFR Parts 800.4-800.6.

## **XXIII. Confidentiality**

All signatories to this Agreement acknowledge that the information about historic properties or potential historic properties are or may be subject to the provisions of Section 304 of the NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if DelDOT determines 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. Having acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

## **XXIV. Term of Agreement**

- A. This Agreement will become effective on the date it is signed by ACHP and will continue in force five (5) years from the date of the final signature. Twelve (12) months prior to the end of this five-year period, the parties to this Agreement will consult to determine if



extension or other amendment of the Agreement is needed, and if so agree on the length of the extension. No extension or amendment will be considered in effect unless all the signatories have agreed to it in writing. If no extension is pursued in writing, the Agreement is void and FHWA shall then consult with SHPO on all individual undertakings in accordance with 36 CFR Part 800.

- B. This agreement is not to be superseded by subsequent Agreements or Program Comments (PCs) unless all signatories agree in writing.
- C. Execution of this Agreement by FHWA and SHPO and implementation of its terms evidence that FHWA has delegated certain Section 106 responsibilities to DelDOT and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Delaware; that FHWA has taken into account the effects of the Program and its individual undertakings on historic properties; and that FHWA has complied with Section 106 of the NHPA.

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SIGNATORY PAGE

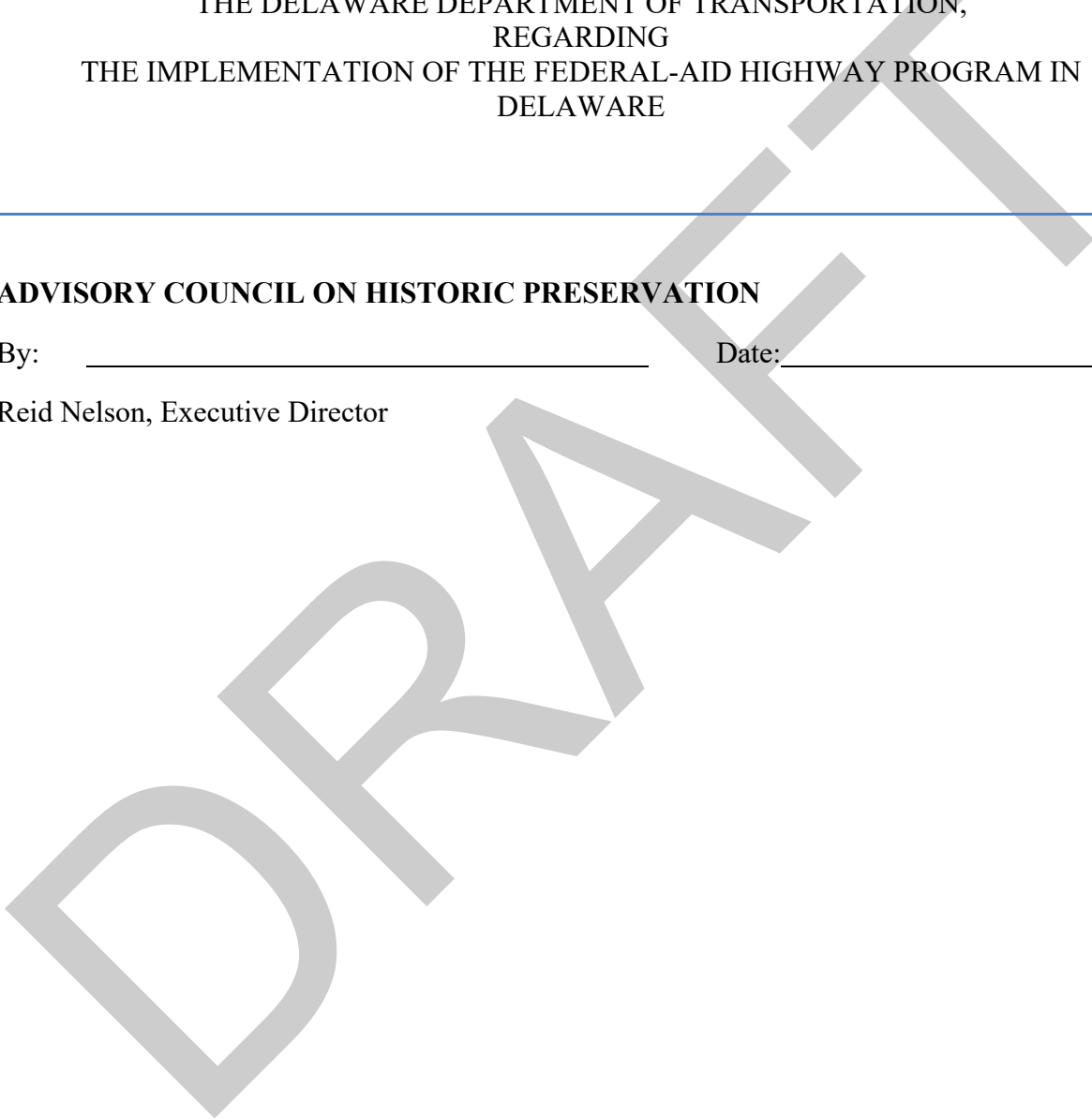
PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, AND  
THE DELAWARE DEPARTMENT OF TRANSPORTATION,  
REGARDING  
THE IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM IN  
DELAWARE



**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Reid Nelson, Executive Director



SIGNATORY PAGE

PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, AND  
THE DELAWARE DEPARTMENT OF TRANSPORTATION,  
REGARDING  
THE IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM IN  
DELAWARE

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**FEDERAL HIGHWAY ADMINISTRATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Camille Otto, Division Administrator

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SIGNATORY PAGE

PROGRAMMATIC AGREEMENT  
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, AND  
THE DELAWARE DEPARTMENT OF TRANSPORTATION,  
REGARDING  
THE IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM IN  
DELAWARE

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**DELAWARE STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Suzanne Savery, State Historic Preservation Officer

SIGNATORY PAGE

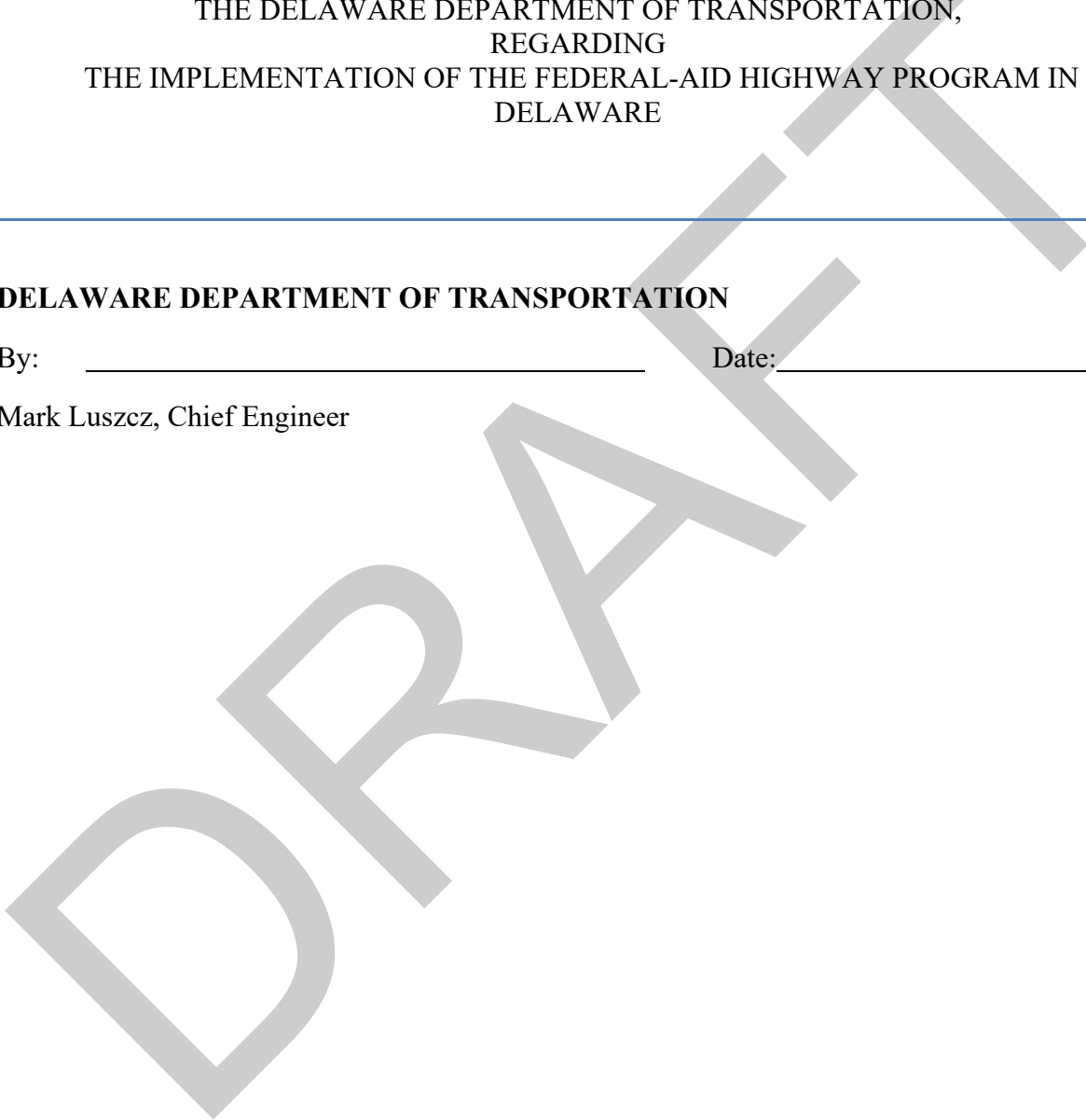
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THE DELAWARE DEPARTMENT OF TRANSPORTATION,  
REGARDING  
THE IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM IN  
DELAWARE



**DELAWARE DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Luszcz, Chief Engineer



# **APPENDIX A**

**Project Types with Minimal Potential to Affect  
Historic Properties**

**and**

**Email Template for Projects with Minimal  
Potential to Affect Historic Properties**

## Project Types with Minimal Potential to Affect Historic Properties

FHWA, SHPO, and DelDOT concur that the following list of activities have minimal potential to affect historic properties provided they are limited to the activities list below, are not part of larger undertaking, and are on an existing transportation facility. DelDOT qualified staff will review undertakings to ensure that the proposed exemptions are consistent with Appendix A. Undertakings limited to these activities shall not require section 106 consultation with SHPO nor any other further consideration under section 106 provided that:

- The Undertaking is limited to the activities specified below; and
- The Undertaking is not within or adjacent to a National Historic Landmark or National Park, or property under the jurisdiction of the National Park Service; and
- The Undertaking has no known public controversy based on historic preservation issues.

Undertakings include:

1. Pavement milling, overlaying, patching, chip seal, on existing roads or trails when the roadway footprint is not widened to include new shoulders or travel lanes. Some overlay projects may include shoulder flattening, within the existing roadway footprint.
2. Minor safety improvement projects, such as, but not limited to intersections listed on the Hazard Elimination Program (HEP); when the roadway footprint is not widened.
3. Chemical surfacing treatments applied to roads to protect or preserve existing pavement.
4. Routine maintenance of existing roads, trails, guardrail, drainage structures, including pipe replacements, drainage ditches, tide gates, and fences that does not include changes in the alignment or footprint of the roadway or include changes in the location or extent of drainage structures and ditches.
5. Roadway striping, pavement marking and installation or replacement of vehicle monitoring equipment (e.g., red light and traffic cameras, Bluetooth sensors, and wavetronix sensors).
6. Rest area repair and maintenance.
7. Bridge deck rehabilitation and stabilization confined strictly to road surface work on the structure.
8. Bridge structural maintenance, stabilization, and rehabilitation work; provided the bridge is less than 45 years of age and/or not listed on or eligible for the NRHP.

9. Bridge maintenance activities on NRHP eligible or listed bridges, including and limited to: cleaning of the bridge; in-kind replacement of expansion joints and compression seals; overlay of existing approach roads, where there will be no expansion of the wearing surface; cleaning scuppers or other drainage conveyances; and in-kind replacement of rip rap, protective jackets, and fenders, provided all activities comply with the Secretary of Interior's Standard for Historic Properties.
10. Repair and replacement of existing sidewalks, curbs, and ramps, such as those made under the Americans with Disabilities Act (ADA); provided in-kind or compatible materials are used for construction, and the alignment or radius of curb is not substantially changed.
11. Repair, replacement, or installation of lighting, signals, signage, and other traffic control devices.
12. Replacement of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators.

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## Email Template for Projects with Minimal Potential to Affect Historic Properties

- Contract number and name
- Project location
- Description of the work involved and its physical extent
- Any recorded historic resources in the vicinity
- The type of project under this Stipulation
- The location where the record is filed

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# **APPENDIX B**

**Project Types with Minimal Potential to  
Adversely Affect Historic Properties**

**and**

**Finding of No Historic Properties Affected  
Tracking Form**

**and**

**Proposed Finding of No Adverse Effect Form**



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
 800 BAY ROAD  
 P.O. BOX 778  
 DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS  
 SECRETARY

**FINDING OF NO HISTORIC PROPERTIES AFFECTED**  
 Programmatic Agreement Tracking Form

Date:  
 Project Name/Location:

State Contract No.: \_\_\_\_\_ Federal Aid Project No.: \_\_\_\_\_

Finding Classification: V.B.1 or V.B.2.a.i. Project Type: \_\_\_\_\_

USACE Permit  Yes  No

**Project Description:**

In accordance with Stipulation V.B.1 or V.B.2.a.i. of the 2025 Programmatic Agreement for the Federal Aid Highway Program in Delaware, DelDOT Qualified Staff have reviewed the above referenced project and determined that no historic properties will be affected. This form provides the information supporting that finding.

**Area of Potential Effects (APE):**

DelDOT Finding of No Historic Properties Affected

Project Name:

Level of Effort to Identify Historic Properties:

- Desk Review       Field Reconnaissance

Previous Studies:

Resources present in the APE?       No       Yes, listed in the table

NAME or TYPE	CRS #	DATE	DESCRIPTION	NR STATUS

Exempt Under the Post 1945 Bridge Program Comment?       Yes

Additional Information (List):

DelDOT Finding of No Historic Properties Affected

Project Name:

By this form, DelDOT is documenting its intent to apply a finding of *de minimis* impact (23 CFR Part 774.5(b)) based on a finding of no historic properties affected and/or an exception to the requirement for Section 4(f) approval 23 CFR Part 774.13.

Justification for Finding:

DelDOT Architectural Historian:

Signature: \_\_\_\_\_

Justification for Finding:

DelDOT Archaeologist:

Signature: \_\_\_\_\_



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
800 BAY ROAD  
P.O. BOX 778  
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS  
SECRETARY

**PROPOSED FINDING OF NO ADVERSE EFFECT**  
**Programmatic Agreement Stipulation V.B.2.a.ii**

**Date:** Click or tap here to enter text.

Ms. Suzanne Savery, Director  
State Historic Preservation Officer  
Division of Historical and Cultural Affairs  
29 N. State Street  
Dover, DE 19901

Dear Ms. Savery,

The Delaware Department of Transportation (DelDOT) proposes to conduct an undertaking subject to compliance with Section 106 of the National Historic Preservation Act, and its implementing regulations, 36 CFR Part 800.

**Project Name/Location:** Click or tap here to enter text.

**State Contract No.:** Click or tap here to enter text.

**Federal Aid Project No.:** Click or tap here to enter text.

**Project Type:** Click or tap here to enter text.

**USACE Permit:**  Yes  No

**Project Description:** Click or tap here to enter text.

**Area of Potential Effect (APE):** Click or tap here to enter text.

In accordance with Stipulation V.B. of the 2025 Programmatic Agreement (Agreement) for the Federal Aid Highway Program in Delaware, DelDOT Qualified Staff have identified the following historic properties/potential historic properties in the APE:

DelDOT Proposed NAE Finding  
 Project Name:

NAME or TYPE	CRS #	DATE	DESCRIPTION	NR STATUS

Further, pursuant to Stipulation V.B.2.a.ii. of the Agreement, DelDOT proposes that the undertaking, as it is currently defined, will have No Adverse Effect on these historic properties, as DelDOT will ensure that the standard design requirements are met and/or other provisions are applied, as identified on the attached checklist.

Additional Information (List): Click or tap here to enter text.

By this form, DelDOT is also notifying you of its intent to apply a finding of *de minimis* impact (23 CFR Part 774.5(b)) based on a finding of no adverse effect and SHPO concurrence and/or an exception to the requirement for Section 4(f) approval 23 CFR Part 774.13.

If you agree with this finding, please sign below. If within 30 days you notify DelDOT that you do not agree with this finding, consultation will proceed in accordance with Stipulation VI.D. of the Agreement.

Sincerely,

\_\_\_\_\_  
 DelDOT Environmental Stewardship

**Reviewed By:** \_\_\_\_\_  
 DelDOT Architectural Historian

**Reviewed By:** \_\_\_\_\_  
 DelDOT Archaeologist

cc: FHWA  
 SHPO  
 Project Manager

DelDOT Proposed NAE Finding  
Project Name:

**Date:**  
**Proposed No Adverse Effect (NAE) Finding for:**

SHPO Response:

- CONCUR
- DO NOT CONCUR

**Reason:** Click or tap here to enter text.

**State Historic Preservation Office**

**By: Signature:** \_\_\_\_\_  
**Name/Title:** Click or tap here to enter text.

**Date:** Click or tap here to enter text.

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DelDOT Proposed NAE Finding

Project Name:

**Date:**

**DelDOT Proposed No Adverse Effect Finding for:** \_\_\_\_\_

**CHECK ALL THAT APPLY**

**Standard note(s) will be included in the project plans, specifications, Unifier, Environmental Commitments, and/or other contract documents that instruct the contractor to:**

Alert all contractors and subcontractors of the presence and location(s) of the historic properties, contributing elements thereof.

Follow guidance in DelDOT's *Historic Bridge Manual: Guidance and Treatment for Delaware's Historic Bridges*, as applicable.

Avoid any use of the property (no Right of Way acquisition, Temporary Construction Easement, or Permanent Easement). All properties?  If not, specify.

Limit any use of the property to area(s) specified in the plans. All properties?  If not, specify.

Prepare mockup, test panels, or samples of replacement materials or finishes for review and approval by DelDOT Environmental Stewardship Qualified Staff. DelDOT will invite the SHPO and consulting or interested parties to review these materials. DelDOT will document decisions, in conjunction with the District Engineer.

If unforeseen damage to any historic properties occurs, notify DelDOT Environmental Stewardship Qualified Staff prior to implementing repairs to ensure that repairs will meet *The Secretary of The Interior Standards*, as determined by DelDOT in consultation with SHPO and other consulting parties.

Notify DelDOT Environmental Stewardship Qualified Staff prior to implementing any changes affecting location, design, methods of construction, materials, or footprint of the project, to ensure the proposed change will not alter the finding of No Adverse Effect.

Placement of geotextile or other temporary, protective material on ground surfaces to protect known or potential archaeological site areas during construction. DelDOT shall ensure that installation and removal of such materials does not result in disturbance of the ground surface or soil compaction.

DelDOT Environmental Stewardship Qualified Staff to attend Pre-Construction meeting to explain special provisions to contractors and inspectors.

Other, similar provisions that will avoid adverse effects; describe:

## Project Types with Minimal Potential to Adversely Affect Historic Properties

FHWA, SHPO, and DelDOT concur that the following undertakings have minimal potential to cause affects to historic properties, but require screening by qualified staff prior to approval. Qualified staff shall consult with SHPO in accordance with this agreement.

Undertakings include:

1. Bridge and culvert replacement provided that the structure:
  - a. Is less than 45-years old; and listed in DelDOT's Bridge Management Inventory; or
  - b. Has been evaluated in the last 10 years and found not eligible for listing in the NRHP by DelDOT in consultation with SHPO; or
  - c. Is exempt from Section 106 review under the provisions of the Program Comment Issued for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges, issued November 2, 2012.
2. Bridge structural maintenance, stabilization, and rehabilitation work on bridges listed in or eligible for the NHRP; examples of activities include, but are not limited to: in-kind replacement of bridge decking; in-kind replacement or repair of steel beam plates and/or bridge bearings; repair of guardrails which are already attached to parapets; in-kind replacement or repair of existing modern fencing; repainting; repair of cracks in superstructure and substructure; and limited superstructure replacement; provided all work complies with the Secretary of Interior Standard for Historic Properties.
3. All work within existing interchanges, within existing medians of existing divided highways, and between an existing highway and an existing adjacent frontage road.
4. Installation of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators.
5. New landscaping in areas previously disturbed.
6. Installation of new lighting, signals, clankers, and other traffic control devices.
7. Safety projects at existing railroad crossing approaches, signals, and signing where highway alignments cross rail alignments at grade.
8. Roadway rehabilitation and reconstruction which may include construction of turning lanes, parking lots, roundabouts, auxiliary lanes (i.e. truck climbing, acceleration, and deceleration lanes) and shoulder widening within a previously disturbed area and existing right-of-way.
9. Placement of fill material on the side slopes of intersection crossroads and access for purposes of flattening these slopes to meet safety criteria, provided that no soil is removed beyond the area of previous disturbance.

10. Placement of riprap, scour control measures or other erosion control material, including retaining walls, within an area previously disturbed by construction activities, to prevent erosion of waterways, bridge piers, and substructure elements and slopes.
11. Installation, replacement and/or rehabilitation of sidewalks and related curbs, gutters and ramps.
12. Installation, replacement and/or rehabilitation of transit facilities, including bus bays, bus pullouts, shelters and park and ride facilities, located in previously disturbed areas.
13. Intersection improvements at existing highway intersections where safety control is required, including construction of turn lanes in previously disturbed areas, lighting, signalization and signing, installation of posts, poles, and support bases.
14. Paving or minor widening of existing shoulders and right-of-way. This type of project is limited to laying road surface over sub-base gravel within previously disturbed areas. Generally, these projects involve slight shoulder widening or flattening for safety reasons.
15. Fiber optics installations in areas previously disturbed.
16. Projects funded or programmed as Transportation Alternatives in accordance with the Bipartisan Infrastructure Law (BIL) legislation. Except the following activities:
  - a. Historic Preservation and rehabilitation of historic transportation buildings, structures or facilities, including historic railroad facilities and canals, that are listed or eligible for the NRHP;
  - b. Archaeological activities relating to impacts from implementation of a transportation project;
  - c. Environmental mitigation to address pollution due to highway runoff; and
  - d. Control or removal of outdoor advertising only when the object or fixture is a historic property.

# **APPENDIX C**

## **Definitions for Programmatic Agreement on the Federal-Aid Highway Program**

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## Definitions for Programmatic Agreement on the Federal-Aid Highway Program

**Appendix:** Document legally bound to the PA that was developed in consultation and requires a full amendment to be changed.

**Attachment:** Document not developed in consultation and developed by outside entities and does not require a full amendment to be changed.

**Area of Potential Effects (APE):** “The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” (36 CFR § 800.16(d)). For the purposes of this Agreement, this definition shall be understood to include, but not necessarily limited to, an undertaking's proposed footprint of construction, right-of-way acquisition, permanent and temporary easements, as well as any staging, stockpile, disposal, access, new borrow, stormwater management and wetland mitigation areas, or other ancillary activity area(s) directly associated with the undertaking. SHPO’s guidance on Assessing Visual Effects on Historic Properties shall be used to aid in developing a visual APE.

**Consulting Parties:** Individuals and groups with a demonstrated legal or economic relationship to the project or affected properties, a concern with the project's effects on historic properties, and/or knowledge of cultural resources that the project may affect.

**Cultural Resources:** Archaeological sites, historic structures, and historic or cultural objects including both Historic Properties and resources that are not eligible for listing on the National Register of Historic Places.

**Federally Recognized Indian Tribes (Tribes):** Tribes means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (36 CFR § 800.16(m)).

**Historic Period:** Generally referring to the period of history beginning with the exploration of the area by numerous European peoples in North America and continuing through recent development trends in suburbanization and the policies that have shaped the landscape during the latter-half of the twentieth century.

**Historic Properties:** Archaeological sites, historic structures, places, and objects that have been listed on, or evaluated and found to be eligible for listing on, the National Register of Historic Places.

**Invited Signatory:** An invited signatory, upon signing the document has the authority to amend or terminate the agreement.

**Logical Termini:** The rational end points of anticipated project effects for project development. With respect to cultural resources and other environmental considerations, those end points may be more extensive than the footprint or limits of construction of the project.

**Pipe:** A pipe structure that conveys water and is constructed from concrete, corrugated metal pipe, or high-density polyethylene (HDPE).

**Pre-contact:** The portion of the past prior to the arrival of Europeans and the resulting contact between Europeans and Native peoples. (previously commonly termed “prehistory.”)

**Previously Disturbed:** As pertains to Stipulations IV and V of this Agreement, shall be understood to mean areas in which the natural stratigraphic soil profile has been significantly altered due to construction activities (e.g., cut and fill, grading). This definition does not include relatively minor alterations of the profile such as are caused by plowing or intermittent disturbance such as logging.

**Signatory:** A signatory has the sole authority to execute, amend, or terminate the agreement and is required for the agreement to go into effect. FHWA, SHPO, DelDOT, and ACHP are collectively the signatories for this agreement.

**Undertaking:** A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval (36 CFR § 800.16(y)). An undertaking is the type of activity with the potential to effect historic properties, should they be present.

FHWA considers non-construction activities (e.g., purchasing equipment, planning, and design) to not be undertakings and therefore do not require any further obligations under Section 106. All construction-related actions with a federal nexus must comply with 36 CFR 800.4 to 800.6. Questions about applicability of 36 CFR 800.3(a)(1) should be referred to the FHWA Federal Preservation Officer (FPO).

# **APPENDIX D**

## **Internal Review and Consultation Process**

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## Internal Review and Consultation Process

The internal review and consultation processes are not limited to these procedures, nor are all of these procedures required for all undertakings. The level of review and consultation should be appropriate to the specific complexity, scale, and location of the undertaking.

### *Internal Review Process*

1. For projects under Stipulations V and VI that are subject to SHPO review, DelDOT will employ a multi-disciplinary approach to implement the following internal review process. Review of project plans to determine impacts and potential impacts.
2. Literature search and/or records review as laid out in DelDOT's Desk-Review Assessment (Appendix E) to determine the potential for involvement of historic properties.
3. Field review of the project area or windshield survey performed using satellite imagery.
4. Determine the degree of existing disturbance within the Area of Potential Effects.
5. Assess the likelihood that unidentified properties exist in the project area and determine whether an archaeological or historic architectural survey is needed.
6. Identify State recognized Native American tribes who may attach religious or cultural significance to properties within the project area, as appropriate for the scope of the undertaking.
7. Identify Certified Local Governments (CLG), local historic societies, or knowledgeable informants, as appropriate for the scope of the undertaking.

### *Consultation Process*

**Formal Communication:** Formal Communication with SHPO shall be submitted in writing. Submittals will be sent electronically and all formal communication will occur under a signed cover letter.

**Informal Communication:** Informal Communication with SHPO may include telephone conversations, meetings, and electronic mail.

**Monthly Coordination Meeting:** DelDOT qualified staff will meet monthly with SHPO to discuss project design updates and schedules, Section 106 status, project impacts, etc. FHWA will attend as needed.

1. All projects that are subject to SHPO review per Stipulation VI will be formally initiated with SHPO typically when Preliminary Plans are developed. Depending upon the project location and complexity, initiation may deviate from this stage, but will not be later than Semi-Final. As part of the Initiation process, DelDOT qualified staff will provide a review of recorded resources and consult with the SHPO on an APE for the project and will receive concurrence. The initiation will recommend other consulting parties and



request SHPO to identify additional consulting parties. If project modifications lead to changes in potential impacts, DelDOT qualified staff will provide updated information to the SHPO and any participating consulting parties and will request concurrence on a revised APE.

2. Results of any identification and/or evaluation survey for a project under Stipulations V and VI.B will be submitted to the SHPO and any participating consulting parties for their review and concurrence pursuant to 36 CFR § 800.4(b). SHPO and participating consulting parties will have 30 calendar days to review and provide comments. All identification and/or evaluation surveys will be finalized and submitted in digital format to SHPO per Stipulation II.D.4. Hard copies of the surveys shall be submitted to HCA for curation along with artifacts and project materials.
3. For projects that are subject to SHPO review per Stipulation VI, project design and potential impacts will be discussed with SHPO at the Monthly Coordination Meetings as project plans become available. DelDOT will consult with SHPO on potential project impacts before submitting a finding under Stipulation VI.C and VI.D.

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# **APPENDIX E**

## **Desk-Review Assessment**

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## Desk-Review Assessment

Through an examination of pertinent data sets, the Delaware Department of Transportation (DelDOT) Archaeologists will locate and identify known cultural resource points, gain an impression of the pre-contact and historic environment, and assess the likelihood for unidentified archaeological resources within the project's Area of Potential Effects (APE). The desk-review assessment provides guidelines and resources for DelDOT's Archaeologists to complete a good-faith review of the APE for scoping and/or planning of further archaeological work.

A desk-review assessment will be conducted for all Stipulation IV and V projects as identified in the Programmatic Agreement regarding the Implementation of the Federal-Aid Highway Program in Delaware (2024). To comply with National Environmental Policy Act (NEPA), the desk-review assessment will also be conducted for all projects that qualify as a Categorical Exclusion as defined under 42 U.S.C. § 4336. For projects that qualify as an Environmental Assessment as defined under 42 U.S.C. § 4336, DelDOT will consult with Delaware State Historic Preservation Officer (DE SHPO) to determine the need for a desk-review assessment versus a formal Phase I level survey. For projects that require an Environmental Impact Statement as defined under 42 U.S.C. § 4336 a desk-review assessment is not necessary as a formal Phase I level survey will be performed.

Given the wide range of cultural activity in Delaware, by both indigenous and historic peoples, the contexts below will provide a framework for periods of archaeological sensitivity and potential. Although these guidelines are geared toward archaeological resources, equal weight should be given to above-ground cultural resources, since archaeological sites may be associated with these resources.

### A. Pre-contact Context

There are four general, chronological periods of Native American cultures of Delaware defined by Custer's Management Plan for Delaware's Prehistoric Cultural Resources (1986) and referenced in DE SHPO's guidelines for Archaeological Survey in Delaware (2015), or its successor:

1. Paleo-Indian (12000–6500 B.C.)
2. Archaic (6500–3000 B.C.)
3. Woodland I (3000 B.C.–A.D. 1000.)
4. Woodland II (A.D. 1000–circa A.D. 1650)

In addition to the above periods, there is an overall Mid-Atlantic/Eastern Woodland Pre-contact Context that differs in how the chronological periods are split up. Archaeologists working in Delaware need to be cognizant of this distinction.

1. Pre-Paleo-Indian (Pre 12000 B.P.)
2. Paleo-Indian (12000–10000 B.P.)

3. Early Archaic (10000–8500 B.P.)
4. Middle Archaic (8500–5000 B.P.)
5. Late Archaic (5000–3000 B.P.)
6. Early Woodland (3000–2000 B.P.)
7. Middle Woodland (2000–1000 B.P.)
8. Late Woodland (1000 B.P.–circa A.D. 1650)

#### B. Historic Context

In accordance with Delaware Comprehensive Historic Preservation Plan (Ames et al. 1989) and referenced in DE SHPO's guidelines for Archaeological Survey in Delaware (2015), or its successor, the history of Delaware is generally divided into six time periods beginning with the exploration of the area by numerous European peoples in North America and continuing through recent development trends in suburbanization and the policies that have shaped the landscape during the latter-half of the twentieth century. These historic periods are:

1. Exploration and Frontier Settlement (A.D. 1630–1730)
2. Intensification and Durable Occupation (A.D. 1730–1770)
3. Early Industrialization (A.D. 1770–1830)
4. Industrialization and Early Urbanization (A.D. 1830–1880)
5. Urbanization and Early Suburbanization (A.D. 1880–1940)
6. Suburbanization and Early Ex-urbanization Period (A.D. 1940–present)

#### C. Resources

The archaeologist(s) undertaking desk-review assessments should consider all appropriate sources of information and give an assessment of their relevance and reliability. All sources consulted should be documented, whether or not they have been productive.

1. CHRIS (Cultural and Historical Resources Information System) – Database  
CHRIS, managed by the DE SHPO, is Delaware's online GIS-based application used to map previously identified cultural resources. This includes completed cultural resource reports, National Register listed properties, historic districts, historic structures, and archaeological sites. In addition to cultural resource points, CHRIS also has GIS layers for Aerial photography from 1926 through 2024 and State Planning Maps. This should be the first resource consulted during a desk review to provide the archaeologist with an idea of cultural resources already identified in the APE and start to get an idea of archaeological resource probability.

## 2. Historic Maps

Although this list is not inclusive, nor is it georeferenced, it is a good place to start to get an overall picture of Delaware over time. One does not need to look at every map of Delaware for every desk review. Significant maps one would consult are listed below; other maps should be consulted if more information is needed to make a sound decision.

The below maps from 1778 – 1827 can be found online through the University of Delaware Library's Digital Collections <https://digitalcollections.udel.edu/>

- *The Province of New Jersey*, Divided into East and West, commonly called The Jerseys. Engraved and Published by William Faden, 1778

The *Province of New Jersey* is a second edition “with considerable improvements” of two surveys made in 1769 by Bernard Ratzer and Gerard Banker. Although the map focuses on the New Jersey area, it includes the Delaware area, labeled on the map as “The Three Lower Counties.” This reference indicates waterways, early roads, towns, and a few taverns.

- *Maryland und Delaware*. By D.F. Sotzmann, 1797

This post-Revolutionary War map provides a different perspective of Delaware and its westward association with Maryland as opposed to a northern and eastern relationship with New Jersey and Pennsylvania. In addition to state and county boundaries, the map illustrates waterways, roads, and towns, as well as mills, furnaces, forges, and warehouses.

- *Roads of Newcastle County*. Surveyed and Printed by Henry Heald, 1820

The Henry Heald map of Roads of Newcastle County illustrates an early nineteenth-century view of New Castle County using county and hundred boundaries established by an act of the Delaware Assembly in 1775. In addition to roads, creeks, and towns, the map references meeting houses, manufactories, school houses, taverns, and work shops.

- Geographical, statistical and historical map of Delaware. Fielding Lucas, 1827

This map provides an overview of the state of Delaware. It is one of the earliest maps to show both the Canal and the first rail line in Delaware. Additional information on the state is written in text around the map.

*Map of New Castle County, Delaware*, Samuel M. Rea and Jacob Price, 1849

The Rea and Price map provides a detailed mid-nineteenth century view of New Castle County with the earliest railroads present. Also mapped are locations of grist, saw, and paper mills, school houses, post offices, Methodist Episcopal Churches, and some land owners. An inset of Wilmington is also present with a more detailed directory. This map can be viewed online at <https://www.davidrumsey.com/luna/servlet/detail/RUMSEY~8~1~252228~5517841:Map-of-New-Castle-County,-Delaware>

Map of Kent County, Delaware: from actual surveys Published by A.D. Byles, 1859

The Byles map provides a counterpart to the Rea and Price map and presents a mid-nineteenth century view of Kent County. The county map shows general content of roads, railroads, hundreds, etc. In addition, rural buildings with owners' names, school houses, churches, and stores. Eleven town insets are included that show lots, buildings, owners' names, and business directories. This map can be viewed online in color through the Library of Congress at <http://www.loc.gov/item/2013593082>.

*Atlas of the State of Delaware*. By D.G. Beers Published by Pomeroy & Beers, 1868

The D.G. Beers *Atlas of the State of Delaware* provides a view of Delaware just after the Civil War. The maps not only show roads and geographic landmarks, they also identify buildings, property owners and property names, cemeteries and churches. City inset maps also list business owners and their occupations. The Beers *Atlas* is geo-referenced as a GIS layer in CHRIS. A digital copy of the entire atlas in color can be found in the University of Delaware Library's Digital Collections and hosted by Shared Shelf Commons at <https://digitalcollections.udel.edu/Documents/Detail/atlas-of-the-state-of-delaware-from-actual-surveys/68530>

*Map of New Castle County, Delaware*: from actual surveys & records. G.M. Hopkins & Co. 1881

This map provides an updated view of the Rea and Price map. In addition to the detail provided in Rea and Price, hundred boundaries are mapped, as well as the acreage of property owners. In addition to the Wilmington inset, twelve other town insets are included. A digital copy of the map in color can be viewed through the Library of Congress at <http://www.loc.gov/item/2013593083/>.

## USGS Historic Quad Maps

USGS topographic quad maps are used to identify changes in early twentieth century land use and structure location. These maps can be accessed in multiple places, but the USGS has recently provided their collection via the Historical Topographic Map Explorer at <https://livingatlas.arcgis.com/topomapexplorer/index.html>. The Explorer allows the user to overlay multiple historic topographic maps from 1884 to the present.

### 3. Aerial Photography and Satellite Images

Aerial photography is used to identify modern disturbances and land use in project areas. Google Earth shows aerial views from the 1990s to the present as well as a current ground-level view. As mentioned earlier, CHRIS offers the aerial photography from 1937 through 2007. Aerial photography is useful in identifying areas that have been previously disturbed and therefore have little to no potential for archaeological resources.

### 4. Predictive Models

Predictive models are essential to the desk-review assessment, if the APE falls within an existing model, then the desk-review assessment should evaluate the appropriateness of using that predictive model as a primary basis for a determination of further archaeological work. A synthesis of predictive model research completed for DelDOT by A.D. Marble & Company can be found in the Environmental Stewardship library or at [N:\Environmental\Cultural Resources\Resources\Predictive Model Synthesis US 301\\_draft as final.pdf](N:\Environmental\Cultural Resources\Resources\Predictive Model Synthesis US 301_draft as final.pdf) (US 301 Archaeological Site Predictive Model Study, 2015)

### 5. Soil Survey Maps

Assessing Soil Survey maps is imperative for both prehistoric and historic archaeological site predictability. The United States Department of Agriculture has provided the public an electronic tool to access specific soil survey data. Specific to Delaware, archaeologists need to be cognizant of soil types that are well drained and have a higher potential to contain archaeological deposits such as (Matapeake, Sassafrass, etc.) versus soils that are too wet or comprised of tidally influenced salt water such as (Broadkill mucky peat, Transquaking, etc.).

<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

## 6. Tax Ditches

Tax ditch information is useful to determine modern disturbances along drainage channels. Tax Ditches in Delaware date to the second half of the twentieth century per the 1951 Drainage Law. Delaware has 234 individual tax ditch organizations. Dimensions depend on the acreage being drained and the topography of the land. More information on the tax ditches can be found on the DNREC website. DelDOT's Environmental Stewardship section has a GIS layer of tax ditch areas and segments. GIS data on tax ditches can also be viewed online through

<https://www.arcgis.com/apps/webappviewer/index.html?id=8a2a0588b1604d38b878367ceb189370>

## D. Archaeological Site Probability

The determination of archaeological site probability within an APE should involve a consideration of the factors influencing the formation of all types of archaeological sites. Understanding the natural and built environment will aid in forming a holistic assessment of archaeological site probability. Water sources and soil types will be useful for determining the prehistoric potential, whereas the location of historic roads and railroads, along with waterways will be useful in identifying potential historic site locations. Archaeological site probability should be based on considerations of both prehistoric and historic resources. Although not inclusive, below are some considerations to keep in mind when assessing the archaeological site probability within an APE:

1. Are archaeological sites or historic resources located in or immediately adjacent to the APE?
2. Are archaeological or historic resources listed in the NRHP located in the APE?
3. Is an archaeological or historic district or districts located in the proposed APE?
4. Is a cemetery located in or near the proposed APE?
5. Is a historic bridge located in the proposed APE?
6. Is there a historic roadway/cart road located in the vicinity of the proposed APE?
7. Are watercourses (rivers, streams) located in the immediate vicinity of the proposed APE?
8. Are well-drained soils located in the immediate vicinity of the proposed APE?



Based on the proposed APE and the archaeological assessment, a determination is reached that will lead to one of three outcomes. This decision will guide the direction of further archaeological work if necessary.

1. Little to no potential for archaeological resources and **No Further Work** is necessary
2. Additional **DE SHPO consultation** and/or **Field Scoping** is needed to make a decision
3. High potential for cultural resources: this would lead to an **in-house Phase I** or **Consultant-based Work**

E. Documentation and Tracking

Documentation should be used to provide adequate information and justification for the decision made. Additional documentation and tracking will be conducted as part of the Programmatic Agreement. The desk-review assessment tracking excel file can be found at <N:\Environmental\Cultural Resources\PA Project Tracking>

# **APPENDIX F**

## **DelDOT Historic Bridge Criteria for Determining Significance**

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## DelDOT Historic Bridge Criteria for Determining Significance

### Criteria for Determining Significance

Each bridge will be evaluated on its own merits against the National Register of Historic Places criteria for evaluation as enumerated in 36 CFR § 60.4. The National Register criteria are broadly defined, and there are numerous areas of significance associated with those criteria, such as transportation, community planning and development, engineering, and landscape architecture, that relate to bridge and transportation development. The criteria are also discriminating and can be used to distinguish the subtle yet often crucial distinctions of significance among large numbers of similar resources with a common history, separating those that are eligible from those that are not.

The National Register of Historic Places criteria for evaluation are

The quality of significance in American history, architecture, archeology, engineering and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of person significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded or may be likely to yield information important in prehistory or history.

To assist with applying the criteria for evaluation, several considerations addressing specific types of resources are included in the criteria. Two of the “criteria considerations” are relevant:

Ordinarily ... structures that have been moved from their original locations ... and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- b. A building or structure removed from its original location but which is significant primarily for architectural value or which is the surviving structure most importantly associated with a historic person or event; or
- g. A property achieving significance within the past 50 years if it is of exceptional importance.

Reasoning that time is needed to develop “historical perspective and evaluate significance,” the National Register criteria for evaluation generally excludes properties that are not 50 years old. In so much as the time period addressed in the bridge survey is contextually based (common history and common technologies), rather than chronology, bridges that are less than 50 years of age can be evaluated for exceptional importance.

### **Applying the Criteria for Evaluation**

The following explain how the individual criterion will be applied in the evaluation of historic bridges in Delaware:

Criterion A addresses an event or pattern of events that made an important contribution to the historical and physical development of a locality, region, or the state. This could range from the development of a settlement as a regional trading or industrial center or the influence of the Delaware Railroad on the subsequent transportation network development in lower Delaware. Criterion A can include significant transportation routes like the Philadelphia, Wilmington & Baltimore Railroad that became the Pennsylvania RR through Northern Delaware and spurred industrial development and growth in Wilmington, the Du Pont Highway, which ended downstate dependence on railroad and water-borne transportation, or the improvements done in conjunction with the 1952 opening of the Delaware Memorial Bridge.

All bridges have a history. They were built by a railroad, a county, the state, or a private commission, and were thus related to larger historic contexts such as development of improved railroad rights-of-way or expanding the state highway system with the then-prevailing bridge technology. Criterion A differentiates between history that is common to like features, such as all railroads having an impact on the subsequent development of the areas through which they passed or 1950s dualized state highways facilitating the suburbanization of the northern part of the state, and distinguishable events that made a significant contribution to historical development. Thus, representative examples of common bridge types, such as steel and wood multi girder bridges, reinforced concrete slab and T beam bridges, and box culverts, with no distinctive or unusual historical background or setting will not be evaluated as meeting criterion A.

Criterion B addresses historic association with great persons from the past. This criterion is not commonly applied to bridges, as the works of noted engineers and builders are usually better represented under criterion C.

Criterion C addresses the distinctive characteristics of a type, period, or method of construction, the work of a master, or the significance of a historic district and is thus the most broadly applicable criterion. The criterion affords recognition of the evolution of bridge building technology as well as the setting of the structure, or of the importance of the engineer who designed it and fabricator/contractor who erected it. Bridges with unusual construction details or rare survivors of a type that was significant in the development of bridge technology, were the work of noted engineers, engineering firms, or bridge companies, or were particularly good examples of their type are eligible under criterion C.

Criterion C applies to common resource types, like steel multi girders or reinforced concrete T beam spans. Common resource types are analyzed to identify which examples of types and designs

best represent the population and distinguish some examples as being noteworthy and historic. Priority is placed on recognizing (1) examples that mark technological/engineering advances, improvements, or variations and (2) the better or best examples of a resource type or construction detail when a sufficient population is identified. Parameters of distribution also include common topographical, economic, historic, and development factors as well as political boundaries. Better or best was often meant being the earliest, larger, more complicated, or least altered example of a type or a structure that exhibits several distinctive details or notable historical association(s). At times, some noteworthy feature like a particularly well-detailed, custom balustrade or original light standards and luminaires, will be required to merit an eligibility recommendation. This policy will apply to all bridge types and designs, both fixed and movable.

Under criterion C, bridges that are documented as to designer, builder, and/or fabricator will be evaluated as more significant than those that are undocumented. Such information establishes the historical, and frequently, technological significance of the span.

Because of the historically important role the Bridge Division of the Delaware Highway Department has played in the development of the state's roads and bridges since 1917, the historical and technological significance of standardized bridge designs will be a dominant consideration. The historic contexts establish when and under what historical circumstances standardized bridge designs and details were introduced, the frequency at which a standardized design was built, and the technological significance of the designs. The contexts coupled with the survey database provide a means of acknowledging on a statewide basis the oldest extant examples of a type, design or detail in an effort to set the engineering history in the state context. These examples are generally regarded as more significant than later examples. Identifying the early application of a particular technology is an objective of the survey, and tabulating the findings make it possible to determine which structures truly marked transitions from one technology or design to another. Unique, rare, or infrequent survivors of a type or construction detail are also evaluated as having engineering significance under criterion C. Bridge types like a Pratt thru truss or reinforced concrete deck arch are often evaluated as significant because they are no longer common. Yet, they represent the development of bridge technology in this country. Likewise, unusual construction details, like the first use of hammerhead piers in the 1950s or the early use of continuous designs with rigid frame or T beam bridges are evaluated as significant because they reflect an era of experimentation in the development and popularization of different bridge technologies.

Criterion D is generally interpreted to refer to archaeological resources and has limited application to this survey. It may be applied to structures and objects that contain important information that themselves are the principal sources of information. This could apply to an unusual and technologically significant bridge for which no plans or other documentation survives. The study of the bridge would have to yield important information for the structure to be evaluated as eligible under criterion D. An example of such a bridge might be a wood bridge from the colonial period that has remained buried or submerged for the past 200 years and would yield important information about colonial bridge construction techniques. The vast majority of identified extant bridges in Delaware date to within the last 100 years. They represent bridge types that are well documented in historical literature including engineering journals and textbooks, plans, and photos.

## **Historic Districts**

Another component of assessing National Register eligibility is evaluating the setting and contexts to determine if they meet the criteria as a potential historic district. Entire routes or portions of routes can also be historic districts. There are three ways a resource located within a listed or potential historic district can be considered a contributing and thus National Register-eligible resource.

Firstly, the bridge was present in the district during the years that the district achieved its significance. The period of significance is determined by historical research and the physical development of a district. To be evaluated as a contributing resource within a historic district a structure must have been built within that period of significance, such as a 1950 reinforced concrete slab bridge built as part of a well preserved and architecturally significant post-World War II suburban community. Conversely, a late-1940s steel multi girder bridge built in a historic district that achieved its significance prior to World War I would be evaluated as noncontributing regardless of its state of preservation because it is outside the period of significance of the district.

Secondly, the bridge needs to support the historic themes or areas of significance for which the district is being recognized. It must add to the historic architectural qualities, historic associations, or archaeological values for which a district is significant. Thus, unless a structure is related to one of the themes or areas of significance for which the district is eligible, it is evaluated as noncontributing.

Thirdly, some structures located in historic districts meet the National Register criteria on individual merit and are thus eligible independent of their setting and associations. Provisions for such individually significant structures located in historic districts are made in the programmatic procedures of the National Register. The conclusion of the evaluation will be specified on the individual survey forms.

Emphasis will be placed on looking at entire roads as potential historic districts to ascertain if they possess sufficient integrity and significance to meet criteria A and/or C. Did its development make a significant contribution to the broad patterns of our history, and thus meet criterion A, or was it part of the overall history of the ongoing development of roadways in the state? Did the road possess engineering significance or was it a typical solution to common traffic bridge engineering problem? Does it possess the integrity of original design, setting and feeling?

## **Integrity**

One of the most important considerations in the evaluation of National Register status is integrity. A synonym for the state of completeness or preservation, integrity refers to the retention of original fabric and historic appearance. It does not refer its structural or functional adequacy. Integrity is defined in the criteria for evaluation as an integral part of the assessment of the significance of a structure. The seven elements of integrity are “location, design, setting, materials, workmanship, feeling and association.” A majority of these elements must be retained for a resource to be evaluated as eligible. In other words, a structure must appear much as it did when it achieved its significance in order to meet the National Register criteria. The issue of integrity is applied to

structures that are individually evaluated as well as to those that are located in historic districts, contexts, and routes or corridors.

To arrive at an accurate assessment of integrity, alterations will be studied to determine if they (1) are historic or not (executed within the past 50 years), (2) changed the design or how a bridge functions, or (3) compromised the technological and/or historical significance of the structure. These issues figure greatly in the assessment of the historical and technological significance of each bridge.

Alterations that may be considered as drastic enough to make a bridge not eligible include removal of original concrete balustrades/parapets from common bridge types, widening on both sides so that the original structure is undiscernible in elevation, removal of the major portions of the operating mechanisms on a movable bridge, and modern rebuilding, even if it is in-kind. A higher degree of alteration is acceptable as significance in other areas increased, especially for very old or very rare structures.

Some modifications common to a particular bridge type or design were not considered as alterations that detracted from the potential significance of a span because the changes (1) were necessary to address inherent weaknesses in the original design, (2) were necessary replacements to keep the bridge operational, (3) were such minor changes that they did not affect the overall appearance or design of the span, (4) were sensitive alterations that were done in a manner which did not detract from the original design, or (5) are reversible alterations that did not involve the removal of original fabric. These common modifications include replacement of decks or wearing surfaces on multi girder bridges and the replacement of sources of power, brakes, locks, and control panels on movable bridges. Other common alterations that do not diminish integrity include the addition of beam guide rails when they were attached in a manner so as not to irreversibly impact the historic fabric or repointing to masonry when done in a reasonably sensitive manner. Limited in-kind replacement does not adversely affect the technological and historical significance of a bridge, but reconstruction of the structure does, especially in cases such as timber multi girder bridges that have had wholesale superstructure replacements.

Movable spans that survive in complete condition have greater historical and technological significance than examples that have altered movable leaves, machinery, and/or operators houses. This became an important consideration with well-represented 20th-century movable bridge types such as the simple trunnion bascules. It was a less weighty issue with rare types such as Delaware's two Scherzer bridges. In-kind replacement of open gear sets is not regarded as an alteration that compromises integrity.

Certain allowances in integrity are made for bridges that are a unique or rare surviving example of their type and or/design. When a resource type or detail becomes so infrequent or rare that losing one or two examples will mean that it is no longer represented, then the integrity question is secondary to recognizing a disappearing historic artifact. Examples of these bridge types in Delaware include metal trusses, wood trusses, and stone arches. The integrity necessary for a resource to contribute to a historic district is commonly interpreted differently from the integrity needed for individual eligibility. This is because a district as a whole can meet the criteria for significance and integrity even though some of the components are altered somewhat (criterion C). For example, a reinforced concrete slab bridge that has been widened on one side might not be individually eligible, but if it has retained much of its original appearance and is from the period

and area(s) of significance of the district, the bridge might contribute to the historic character of the district and thus be evaluated as a contributing resource. On the other hand, a steel multi girder bridge that has been widened to both sides and has had original railings removed and replaced with safety shape barriers, no longer appears or functions as it did when the district achieved its significance and would be evaluated as noncontributing.

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# **APPENDIX G**

## **Post Review Discoveries**

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## Post Review Discoveries

1. DelDOT shall resolve any post-review discoveries of historic properties that occur prior to the start of construction in accordance with 36 CFR § 800.13(b)(1) or (b)(2).

If previously unidentified potential historic properties are discovered during project construction or if unanticipated effects on historic properties occur as a result of construction activities, the Contractor shall immediately notify the Engineer in Charge and halt all construction work in the area of discovery. DelDOT shall instruct the contractor to cease construction in the immediate area and immediately notify FHWA. In compliance with 36 CFR § 800.13(b)(2), DelDOT shall consult with SHPO. If said discovery or unanticipated effects pertain to resources of Native American affiliation, FHWA and DelDOT shall include the Federally Recognized Tribes in the consultation. Should the discovery include Native American funerary remains and objects, procedures should follow Attachment B.

2. No further construction within 100 feet (30 meters) of the area of discovery, and/or in surrounding areas where additional subsurface remains can reasonably be expected to occur and may be disturbed by project construction for any discovered archaeological resources, may proceed until the requirements of 36 CFR § 800.13 have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property. Construction work in other areas of the project may continue as advised by DelDOT. DelDOT shall inform FHWA of its determination of where construction activities may continue.
3. DelDOT Cultural Resource staff shall notify FHWA and SHPO within two (2) business days of the discovery. In the case of the discovery of Native American artifacts, DelDOT shall assist FHWA in notifying appropriate Tribes that may attach religious and cultural significance to the property within two (2) business days of the discovery.
4. FHWA, SHPO, and DelDOT will meet at the location of the discovery within five (5) days of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. DelDOT shall ensure that construction work within the affected area does not proceed until appropriate treatment measures are developed and implemented or the determination is made that the resource is not eligible for the NRHP. If the affected resource is of Native American affiliation, FHWA shall first consult with the Federally Recognized Tribes before implementing any such treatment option.
5. DelDOT shall ensure that an archaeologist or architectural historian qualified pursuant to Stipulation II.D shall investigate the resource and the work site where the discovery occurred.

6. Upon receiving preliminary information and a recommendation from the archaeologist or architectural historian, DelDOT will consult with SHPO and FHWA will consult with Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.

If neither the SHPO nor a Tribe file an objection within five (5) business days of the DelDOT's plan for addressing the discovery, DelDOT may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA, and ACHP does not need to be notified. DelDOT Cultural Resources Staff shall inform the Engineer when construction activity in the immediate area may resume.

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# **ATTACHMENT A**

## **Unmarked Human Burials and Human Skeletal Remains Act (Del. Code Title 7 Ch. 54)**

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**Part VI**  
**Archaeological and Geological Resources**

**Chapter 54**

**Unmarked Human Burials and Human Skeletal Remains**

**§ 5401. Purpose.**

The purposes of this chapter are:

(1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State, including subaqueous lands, but excluding those found anywhere on federal land.

(2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, construction, or other ground disturbing activities.

(3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials.

(4) To provide for the dignified and respectful reinterment or other disposition of Native American, African American, and all other skeletal remains, including those of enslaved individuals and individuals of undetermined cultural affiliation.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 5; 83 Del. Laws, c. 142, § 1.)

**§ 5402. Definitions.**

As used in this chapter:

(1) "Committee" means a body of stakeholders that inform the treatment and disposition of unmarked human burials and skeletal remains:

a. When burials or remains are determined to be Native American, the Committee shall be chaired by the Director or the Director's designee, and consist of the Chief of the Nanticoke Indian Tribe and the Chief of the Lenape Indian Tribe of Delaware, or the Chiefs' designees, 2 members appointed by each Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State or the Director's designee, 1 member appointed by the Director, and a ninth member from the private sector appointed by the Governor. Governor's appointee shall serve 1-year, renewable terms. This is a standing committee.

b. When burials or remains are determined to be other than Native American, an ad hoc committee shall be formed. The committee shall include individuals well suited to ensure treatment and disposition of the human burial and skeletal remains furthers the goal of providing for the dignified and respectful reinterment or other disposition including recognition of the special consideration for African Americans, including enslaved persons, and for persons of undetermined cultural affiliation. The Committee shall be chaired by the Director or the Director's designee, and consist of 1 member of the private sector appointed by the Governor who shall serve 1-year renewable terms and 7 members appointed by the Director, representing interested parties, which may include any of the following:

1. Known or presumed lineal descendants.
2. Individuals or organizations with a likely cultural affiliation to the remains.
3. The landowner.
4. A professional archaeologist.
5. An historian or person of similar expertise.

(2) "Director" means the Director of the Division of Historical and Cultural Affairs, Department of State.

(3) "Human skeletal remains" or "remains" means any part of the body of a deceased human being in any stage of decomposition.

(4) "Lineal descendant" means any individual tracing their ancestry directly or by proven kinship.

(5) "Medical Examiner" means as defined in Chapter 47 of Title 29.

(6) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer or employee, agent, department, or instrumentality of the United States or of any state or political subdivision thereof.

(7) "Professional archaeologist" means a person having all of the following qualifications:

- a. A graduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology.
- b. A minimum of 1 year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains.
- c. Has designed and executed an archaeological study and presented written results and interpretations of such study.

(8) "Proven kinship" means the relationship among individuals that exists because of genetic descent, which includes racial descent.

(9) "Skeletal analyst" means any individual having all of the following qualifications:

- a. A graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology, or other relevant aspects of physical anthropology or medicine.

b. A minimum of 1 year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity.

c. Has designed and executed a skeletal analysis and presented the written results and interpretations of such analysis.

(10) "Unmarked human burial" means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

### **§ 5403. Avoidance, protection, and preservation of remains.**

All persons are encouraged to undertake due diligence to identify, demarcate, and preserve in situ, unmarked human burials to avoid encountering skeletal remains; and to share information with the Division of Historical and Cultural Affairs, including reports or studies undertaken for these purposes.

(83 Del. Laws, c. 142, § 1.)

### **§ 5404. Discovery of remains and notification of authorities.**

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being encountered shall notify immediately the Medical Examiner or the Director.

(b) When any person encounters unmarked burials or human skeletal remains as a result of construction, agricultural, or any other ground-disturbing activities, the person shall cease the ground-disturbing activity immediately upon discovery and notify the Medical Examiner or the Director of the discovery.

(c) Human burials or human skeletal remains which are encountered by a professional archaeologist as a result of survey or excavations must be reported to the Director. Excavation and other activities may resume after written approval is provided by the Director. The treatment, analysis, and disposition of the remains shall conform to the provisions of this chapter.

(d) The Director shall notify the Chief Medical Examiner of any reported human skeletal remains discovered by a professional archaeologist.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

### **§ 5405. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the Medical Examiner shall certify in writing to the Director, as soon as possible, whether the remains come under the Medical Examiner's jurisdiction.

(b) If the Medical Examiner determines that the remains come under the Medical Examiner's jurisdiction, the Medical Examiner will immediately proceed with an investigation pursuant to Chapter 47 of Title 29.

(c) All those remains determined to be not within the jurisdiction of the Medical Examiner shall be within the jurisdiction of the Director.

(66 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

### **§ 5406. Archaeological investigation of human skeletal remains.**

All excavations not under the jurisdiction of the Medical Examiner shall be either conducted by, or under the supervision of, a professional archaeologist and shall be subject to permission from the landowner. All permissible excavations shall be conducted in accordance with the regulations promulgated for this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

### **§ 5407. Consultation, analysis, and disposition.**

(a) The Director shall notify the Committee of all skeletal remains determined to be Native American within 5 days of learning of the discovery of human burials or skeletal remains pursuant to § 5404 of this title. The Director shall provide the Committee with a written plan for the proposed treatment and ultimate disposition of the skeletal remains within 60 days of making the notification.

(b) For all non-Native American burials or skeletal remains, the director shall begin forming the Committee within 5 days of learning of the discovery pursuant to § 5404 of this title. The Director shall publish notice of all discoveries of human skeletal remains other than Native American on the Division's website, and at least once per week for 2 successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or lineal descendants or both of the deceased. Lineal descendants shall have 30 days after the last published notice to notify the Director of their ancestry or proven kinship to the skeletal remains. Within 60 days of the end of the notification period the Director shall convene the Committee to develop a written plan for treatment and disposition of human skeletal remains. Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the lineal descendants or shall be determined by the Director if no lineal descendant is identified.

(c) All skeletal analysis conducted pursuant to this chapter shall be undertaken only by a skeletal analyst.

(d) Any previously excavated skeletal remains of Native Americans of the State which are on display or remain uncovered as of June 5, 1987, shall be reinterred within 1 year. Treatment and disposition of all Native American remains discovered after enactment shall

be determined by the Committee or, if direct descent can be determined, by a lineal descendant. In any event, Native American skeletal remains discovered after enactment shall be reinterred within 90 days unless an extension or other disposition is granted by the Committee.

(e) All reasonable efforts shall be made to maintain burials and skeletal remains in situ if that is the consensus of the Committee. Any person which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be under the jurisdiction of the Division of Historical and Cultural Affairs shall be responsible for the cost of research to determine the identity, delineation of the burial ground, excavation, and reinternment, and providing a suitable marker for those remains.

(66 Del. Laws, c. 38, § 1; 68 Del. Laws, c. 290, § 84; 75 Del. Laws, c. 153, §§ 4, 7; 83 Del. Laws, c. 142, § 1.)

### **§ 5408. Prohibited acts.**

No person, unless acting pursuant to Chapter 47 of Title 29, shall:

(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this chapter.

(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.

(3) Knowingly exhibit human skeletal remains.

(4) Knowingly fail to notify the Medical Examiner or the Director of a discovery of unmarked human burials or skeletal remains pursuant to § 5404 of this title.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, § 4; 83 Del. Laws, c. 142, § 1.)

### **§ 5409. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this chapter.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this chapter.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in § 5408(1) of this title.

(d) Remains discovered within the known boundaries of a marked cemetery under the purview of the Department of Health and Social Services pursuant to Chapter 79A of Title 29 are not subject to this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 8; 83 Del. Laws, c. 142, § 1.)

### **§ 5410. Criminal penalties.**

Any person who violates § 5408 of this title shall upon conviction be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter.

(66 Del. Laws, c. 38, § 1; 75 Del. Laws, c. 153, §§ 4, 6, 9; 83 Del. Laws, c. 142, § 1.)

### **§ 5411. Rules, regulations, standards, and guidelines.**

The Division of Historical and Cultural Affairs may, with the approval of the Department of State, formulate and adopt such rules, regulations, standards, and guidelines as it considers necessary for the effective execution of its purposes under this chapter.

(75 Del. Laws, c. 153, § 10; 83 Del. Laws, c. 142, § 1.)

# **ATTACHMENT B**

## **Delaware Nation Unanticipated Discoveries Policy**

**DRAFT**



**DELAWARE NATION HISTORIC PRESERVATION**  
**Inadvertent Discovery Policy & Protocols for Archaeology Consultation**

The purpose of this policy is to outline procedures and expectations for tribal consultation to be followed by all agencies, contractors, etc. during ALL archaeological work, and/or in the event of an inadvertent discovery of human remains or cultural archaeological materials affiliated as Native American within Delaware Nation's homelands and areas of interest.

**Procedures for Inadvertent Discovery of Funerary Remains and Objects:**

1. If ANY potentially sensitive Native American archaeological resources (see list on next page), human remains, or animal burials are encountered, all onsite work shall cease in the immediate area with a 50-foot buffer of the discovery location until Delaware Nation is consulted or unless prior agreements are in place. See list on next page for resources or feature warranting notification to our office.

2. The lead agency shall contact the following representatives immediately (concurrently with the SHPO):

**Carissa Speck**, *Historic Preservation Director*  
cspeck@delawarenation-nsn.gov  
405-901-1715 x 1301

**Katelyn Lucas**, *Historic Preservation Officer*  
klucas@delawarenation-nsn.gov  
405-544-8115

3. Place tobacco (looseleaf preferred) with human remains and/or funerary objects if possible, and cover and/or wrap them with a natural fiber cloth such as cotton or muslin (unbleached).

4. Absolutely NO photographs are to be taken of human remains, animal burials, or funerary objects, nor drawings made, unless deemed necessary in consultation with Delaware Nation. Any photographs or drawings should be redacted from any reports that will be broadly distributed, along with locational details. Just using written or textual descriptions of sites is preferred.

5. Human or animal remains and any items deemed funerary or sacred should NOT be cleaned or processed, and handling should be limited. Non-destructive "in-field" documentation of the remains and cultural items shall be carried out in consultation with Delaware Nation, who will determine appropriate methods of recordation depending upon the circumstances.

6. The preferred treatment of funerary materials and human or animal burials is to leave them in-situ (in place) and protect them from further disturbance. If remains and/or cultural items are to remain in-situ, the requirements of 43 CFR 10 Sections 10.4-10.6 will have been fulfilled.

7. Our preference is that NO remains or potential funerary artifacts should be taken off site and should be housed in on-site facilities until Delaware Nation consults on next steps. If remains or artifacts must be removed from the site, procedures must be determined in consultation with Delaware Nation. Delaware Nation requests that no artifacts, but especially funerary remains and objects, should ever be removed from the state they were found in, including for lab documentation or analysis purposes.

8. The specific location(s) of discoveries shall be withheld from public disclosure (with the exception of local law officials, necessary consulting agencies, and tribal officials as described above) and protected to the fullest extent by federal law.

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**DELAWARE NATION HISTORIC PRESERVATION**  
**Inadvertent Discovery Policy & Protocols for Tribal Consultation**

**Delaware Nation's Historic Preservation Office treats ALL discoveries of Native American materials or features during any archaeological survey work and/or data recovery work essentially the same as inadvertent discoveries.** We request daily or weekly updates on what artifacts and features are found (if any) so that we can consult on ALL stages of the work. We may send tribal monitors to be onsite during work, but still request updates regardless of whether or not we sent monitors to ensure everyone is kept informed and given time to review findings. Even in data recovery work where we expect that artifacts and/or remains will need to be removed and relocated to avoid destruction, we still expect to be consulted throughout the process to ensure all potential funerary or otherwise sacred materials are identified correctly and handled properly.

**General Guidelines for Archaeological Work:**

- NO artifacts should be taken off site, cleaned, processed, or be subject to invasive/destructive analysis—and should be housed in the on-site facilities—until they are reviewed by consulting Tribal Nations. **We underscore NO cleaning until review**, for cleaning both disrespects tribal protocols for sensitive materials and could destroy valuable scientific evidence on materials
- Our preference if human remains, animal burials, and/or funerary objects are discovered is always to leave them in-situ, halt all further work (following procedures on previous page), and request that projects avoid further impacts to the site
- If, in consultation with Delaware Nation, it is determined that funerary remains or objects canNOT be left in-situ and must be removed to protect them from destruction:
  - Any soils or other materials collected with them or having touched them should be kept with them, as Delaware Nation will also want those repatriated. This includes ALL materials found in one soil profile above and below, even charcoal, soil samples, any debitage or other items

**General Guidelines for Identifying Sensitive Materials:**

Anything found within the same soil profile, or one soil profile above and below, of human remains OR animal burials is also considered funerary by our office and should be treated as such. We will want to review more closely anything else found within half a mile of the location so that we can assess the broader cultural landscape. Workers should be able to provide general information on where materials are being found even during ongoing work, so that we can flag other potentially sensitive sites. Below is a general list of items we would flag as sensitive **even if remains are not immediately present**, and request be treated as sensitive unless we receive additional information that would suggest otherwise.

- Human remains
- Animal burials or remains of unusual or non-food species (dog, eagle, hawk, bear, turtle, otter, fisher)
- Shell middens
- Pottery in the following categories: complete pieces, pieces with effigies, large deposits, pieces intentionally/ceremonially broken
- Anything with carvings or effigies
- Crystals, fossils, fossilized teeth or bone
- Wampum or treaty medals
- ALL personal items: including beads, jewelry, pendants, earrings, mirrors, combs, pipes (either complete pipes or pipe fragments), and human or animal figures. Sensitive beads include beads made of shell, bone/ivory, clay, wood, stone, or glass. European trade beads were adopted by Native Americans and used for personal clothing, jewelry, and ceremonial pieces.
- Any metal or metal alloy materials including copper or brass wire, pendants, clothing adornments
- Any fabrics, textiles, and/or woven items including grass mats, especially if found in proximity to personal items
- Any materials with evidence of painting on them, painting making, or storage of paints, especially ochre
- Large deposits of debitage, points, tools, especially ones that look like they were intentionally/ceremonially broken
- Anything found with evidence of burning