



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Programmatic Agreement
on Transportation Enhancements

Date: JUN 11 1997

From: Chief, Environmental Analysis Division

Reply to
Attn. of: HEP-40


To: Regional Administrators
Federal Lands Highway Program Administrator

Attached for your information, consideration, and use by State DOTs is a copy of the new programmatic agreement on transportation enhancements. This nationwide agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers (SHPOs) is expected to reduce the time spent by State DOTs in project review, consultation, and processing of transportation enhancement activities. It will accomplish this by encouraging local coordination and public participation, and reducing the need for project-by-project coordination with out-of-State groups. In addition, the agreement permits the SHPO and the State DOT to exercise judgment in weighing the benefits of the project against minor, but measurable, adverse changes to historic qualities. The net result, as one State DOT noted, will be to greatly assist in the implementation of the ISTEA, and to reduce the time to process projects by 30 to 60 days.

The Acting Administrator has signed this nationwide programmatic agreement on behalf of the FHWA. Individual States may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. The FHWA Division Administrator will be the Agency official with responsibility for ensuring that the agreement is carried out.

Use of this nationwide programmatic agreement is NOT mandatory. States DO NOT have to adopt it for their enhancements projects. Many States have already developed agreements that work for them; and those agreements remain in effect. Some States may wish to adapt the approach conveyed in this agreement and further tailor it for their specific program needs. Please advise the State that if they choose to adapt this agreement and create a new one, they will need to develop it in consultation with the FHWA Division, the SHPO, and the ACHP.

If you have any questions please contact Mr. Bruce Eberle, FHWA Historic Preservation Officer. He may be reached at (202) 366-2060.


James M. Shrouds

Attachment

**NATIONWIDE PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION (FHWA),
THE NATIONAL CONFERENCE OF STATE HISTORIC
PRESERVATION OFFICERS
(NATIONAL CONFERENCE OF SHPOS), AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
(ACHP),
FOR IMPLEMENTATION OF TRANSPORTATION
ENHANCEMENT ACTIVITIES**

WHEREAS, Section 316(2) (23 U.S.C. 133(e)(5)(B)) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities; and

WHEREAS, Section 1007(a) (23 U.S.C. 133(b)(8)) of the ISTEA authorizes the expenditure of Federal Surface Transportation Program funds for transportation enhancement activities; and

WHEREAS, Section 1007(c) (23 U.S.C. 101(a)) of ISTEA defines the term "transportation enhancement activities" to include a variety of project categories that can be beneficial to the preservation of historic properties; and

WHEREAS, the FHWA has determined that transportation enhancement activities may have effects upon properties included in or eligible for the National Register of Historic Places and has consulted with the ACHP, and the National Conference of SHPOs pursuant to 36 CFR 800.13 of the regulations implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the signatories to this agreement desire to expedite the necessary historic preservation review for transportation enhancement activities beneficial to historic preservation and thereby encourage the use of transportation enhancement funds for historic preservation purposes; and

WHEREAS, the signatories to this agreement recognize that although most projects advanced as transportation enhancement activities should benefit historic properties, the State Transportation Agency (STA) shall make known any findings regarding effects to historic properties through its normal public participation process; and

WHEREAS, the STA, after consultation with the individual State Historic Preservation Officer (SHPO), may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office.

NOW, THEREFORE, the FHWA, the ACHP, and the National Conference of SHPOs, pursuant to § 316(2) of the National Highway System Designation Act of 1995, agree that transportation enhancement activities shall be implemented in accordance with the following stipulations to satisfy the FHWA's section 106 responsibilities for all individual undertakings of transportation enhancement activities which may affect historic properties in any State where this programmatic agreement is activated.

STIPULATIONS

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

- I. Expediting the Processing of the Following Categories of Transportation Enhancement Activities:**
 1. Provision of facilities for pedestrians and bicycles.
 2. Acquisition of scenic easements and scenic or historic sites.
 3. Scenic or historic highway programs.
 4. Landscaping and other scenic beautification.
 5. Historic preservation.
 6. Rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).
 7. Preservation of abandoned railway corridors (including conversion and use for pedestrian or bicycle trails).
 8. Control and removal of outdoor advertising.
 9. Archeological planning and research.
 10. Mitigation of water pollution due to highway runoff.

- II. Identifying and Evaluating Historic Properties**
 - A.** The STA will be responsible for identifying and evaluating all historic properties within each activity's area of potential effect, and evaluating eligibility for the National Register of Historic Places, in consultation with SHPO, following the procedures set out in 36 CFR 800.4.

 - B.** The STA, in consultation with the SHPO, may encourage or require project sponsors to include historic property documentation or survey results as part of the transportation enhancement activity application.

III. Determining Effect on Historic Properties

The STA will assess the effects of the proposed transportation enhancement activities on historic properties by applying the Criteria of Effect and Adverse Effect (36 CFR 800.9). The STA will ensure that the SHPO is provided adequate documentation to review the STA's effect determination. The SHPO will promptly inform the STA if more information is necessary to make its determination.

A. No Effect

If the STA determines that the undertaking will have no effect on historic properties, it will notify the SHPO in writing. The SHPO will review this determination and provide written comments to the STA within 15 working days after receipt of the STA's finding and adequate documentation. If the SHPO concurs with the STA's no effect determination, or fails to provide comments within 15 working days, the undertaking may proceed as planned. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no effect on historic properties or shall apply the Criteria of Adverse Effect and continue the review of the project pursuant to Stipulation III.B. of this agreement.

B. No Adverse Effect and Adverse Effect

1. If the STA determines that the undertaking will have no adverse effect on historic property, it will notify the SHPO in writing. The SHPO shall review this determination and provide written comments to the STA within 30 days after receipt of the STA's finding and adequate documentation.
 - a. If the SHPO concurs with the STA's no adverse effect determination or fails to provide comments within 30 days, the STA shall document that finding, which shall be available for public inspection, and proceed with the activity as planned without further review by the ACHP.
 - b. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no adverse effect on historic properties or shall proceed in accordance with Stipulation III.B.2. or III.B.3.

2. If the STA and the SHPO cannot agree that the proposed transportation enhancement activity will have no adverse effect, or if they agree there is an adverse effect, then the STA shall notify the FHWA and the FHWA shall complete the section 106 process in accordance with 36 CFR 800.5 and 800.6, unless stipulation III.B.3. applies.
3. Transportation enhancement activities may advance without further comment from the ACHP, provided that the FHWA and the SHPO concur with the STA that: (a) the benefits to historic property(ies) outweigh any minor adverse effects (e.g., when a proposed rehabilitation substantially meets the Secretary of the Interior's Standards for Preservation Projects); and that (b) agreed upon measures will be implemented to mitigate those effects (e.g., appropriate recordation measures). The STA shall document the effect finding, which shall be available for public inspection.

IV. Amending this Programmatic Agreement, If Requested

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accordance with 36 CFR 800.13. No amended agreement shall take effect until it has been executed by all parties, and all the STAs and SHPOs have been duly notified.

V. Processing of Any Public Objections

If at any time during the implementation of the measures contained in this Agreement, an objection to any such measure or its manner of implementation should be raised by an interested person, as that term is defined at 36 CFR 800.1(c)(2), the FHWA shall consult with the objecting party, the SHPO, and, as needed, the ACHP to resolve the objection. In light of the ACHP's views, the FHWA should reconsider the finding. An objection by the public, however, does not require the FHWA to suspend action on an undertaking. If the objection concerns the eligibility of a property for the National Register, the FHWA may refer the matter to the Keeper of the National Register, if it considers referral appropriate.

VI. Resolving Disputes Among Parties

Should any party to this Agreement object within 30 days to any action pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all relevant documentation to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

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

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VII. Monitoring Transportation Enhancement Activities

The SHPO and the ACHP may monitor any activities carried out pursuant to this Agreement, and the ACHP will review such activity if so requested. The FHWA will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

VIII. Terminating this Programmatic Agreement

Any party to this Programmatic Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IX. Establishing Duration of this Programmatic Agreement

This Programmatic Agreement will continue in full force until such time as it is terminated or funds for projects undertaken pursuant to this Programmatic Agreement are no longer authorized or available.

X. Submitting a Report

The STA will compile a list of projects that are processed under this programmatic agreement. This list may be included with or incorporated into periodic reports provided to the FHWA. The list shall include, at minimum, the project name, location, and the amount of authorization. The STA will provide a copy of the list to the FHWA division office either periodically throughout the year, or by March 31 each year beginning the year after implementation of this programmatic agreement. The FHWA division will provide copies of the list to the ACHP and the National Conference of SHPOs by April 21.

XI. Failing to Comply with this Programmatic Agreement

In the event the FHWA does not carry out the terms of this Agreement, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidence that the FHWA has afforded the Council a reasonable opportunity to comment on its Transportation Enhancement Program and that the FHWA has taken into account the effects of the Transportation Enhancement Program on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Robert S. Sater*
Date: 5-1-97
Chairman

FEDERAL HIGHWAY ADMINISTRATION

By: *Jan Harvey*
Date: _____
Acting Administrator

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: *Judith S. Battison*
Date: August 29, 1997
President