APPENDIX B

PROGRAMMATIC REVIEW OF 100% STATE FUNDED UNDERTAKINGS
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1. Applicable Legislation

Pennsylvania state law requires that state undertakings be reviewed under Title 37 of the Pennsylvania Consolidated Statutes, also known as the Pennsylvania State History Code. The following sections of the Pennsylvania State History Code apply to 100% state funded undertakings carried out by Commonwealth agencies: 37 Pa.C.S.A. 507; 37 Pa.C.S.A. 508; 37 Pa.C.S.A. 509; and 37 Pa.C.S.A. 510.

2. Programmatic Review of 100% State Funded Undertakings

Section 1(A) of the Programmatic Agreement (PA) delegating the administration of the Federal Aid Highway Program in Pennsylvania to the Pennsylvania Department of Transportation (PENNDOT) for the purposes of ensuring compliance with Section 106 of the National Historic Preservation Act (NHPA) provides for the delegation of PennDOT to review 100% state funded transportation undertakings that do not require a federal permit. PENNDOT will ensure that 100% state funded transportation undertakings that do not require a federal permit comply with the provisions of the Pennsylvania State History Code. Under the terms of the PA, PENNDOT will assume compliance and review responsibilities for these undertakings.

PENNDOT Qualified Professionals in Archaeology and Architectural History will be responsible for establishing the Area of Potential Effects (APE) of an undertaking, identifying and all historical and archaeological resources within the APE, evaluating those resources for their eligibility to the National Register of Historic Places (NRHP), evaluating a project's potential effects on NRHP-listed or eligible historic and archaeological properties within the APE, and developing mitigation measures that avoid or minimize adverse effects. PENNDOT will utilize the procedures outlined in 36 CFR 800 in establishing the APE, identifying historic and archaeological resources within the APE, determining the NRHP eligibility of those resources, and determining the potential effects of an undertaking. The compliance and review process is described in greater detail below.

(A) Assessment of APE. PENNDOT Qualified Professionals will be responsible for establishing the APE for any 100% state funded undertaking that does not require a federal permit. The Qualified Professionals may consult with the Pennsylvania State Historic Preservation Officer (SHPO) concerning the establishment of the APE.

(B) Identifying Historic Properties. The PENNDOT Qualified Professionals, in accordance with 36 CFR 800.4, will identify historic and archaeological properties within the APE of each undertaking, and obtain information which will be pertinent to the evaluation of these resources.

(C) Public Participation and Notification. The PENNDOT Qualified Professionals will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects.
on NRHP-listed or eligible historic and archaeological resources, the likely interest of the public in the effects on cultural resources, and confidentiality concerns of private individuals and businesses.

(D) Finding of No Historic Properties Affected. If PENNDOT finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect on them as defined in 36 CFR Part 800.16(i), the Qualified Professionals will make a formal finding of No Historic Properties Affected. Prior to any such finding, PENNDOT may consult with SHPO regarding application of the criteria. PENNDOT will notify SHPO and any interested person that this finding of No Historic Properties Affected has been made and will forward copies of adequate documentation to support that finding to SHPO for inspection by the public. No further review is required under the Pennsylvania State History Code for a finding of No Historic Properties Affected.

(E) Finding of No Adverse Effect. For any undertaking that includes, within the APE, listed or eligible properties that will not be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), the PENNDOT Qualified Professionals will make a formal finding of no adverse effect and specify those conditions, if any, that will be imposed to secure that finding. PENNDOT will ensure that specified conditions are met. Prior to any finding of no adverse effect, PENNDOT may consult with SHPO regarding application of the criteria. PENNDOT will notify SHPO and any interested person that this finding of no adverse effect has been made and will forward copies of adequate documentation to support that finding to SHPO for inspection by the public. No further review under the Pennsylvania State History Code is required for a finding of no adverse effect.

(F) Finding of Adverse Effect. For any undertaking that includes, within the APE, NRHP-listed or eligible properties that will or may be adversely affected by the undertaking, as defined by the Criteria of Adverse Effect set forth in 36 CFR 800.5(a), the PENNDOT Qualified Professionals will make a formal finding of adverse effect. When a finding of adverse effect has been made, PENNDOT will, at a minimum, evaluate in consultation with SHPO and other consulting parties alternatives to the project that would avoid any adverse effect and document them in the project files. If no such alternatives exist, PENNDOT will undertake all possible steps to minimize or mitigate the adverse effect.

1. Adverse Effect - Standard Mitigation Measures Applicable. Prior to any finding of Adverse Effect, PENNDOT may consult with the SHPO regarding the application of the criteria and appropriateness of utilizing Standard Mitigation Measures as set forth in the Manual of Standards and Guidelines adopted pursuant to the PA. If
PENNDOT determines that Standard Mitigation Measures are applicable, those measures shall be incorporated into a formal written finding of Adverse Effect. PENNDOT shall notify the SHPO, consulting parties and interested members of the public that this finding of Adverse Effect has been made and shall forward copies of adequate documentation as set forth in 36 CFR 800.11(e) to support the finding to the SHPO for inspection by the public. No further review is required under the Pennsylvania State History Code.

2. Adverse Effect - Memorandum of Understanding (MOU) If PENNDOT determines that the Standard Mitigation Measures are not applicable, PENNDOT will consult with the SHPO and consulting parties on the special provisions adopted to avoid, minimize, or mitigate the adverse effect, and draft an MOU to reflect the agreement. This MOU, together with copies of the documentation as set forth in 36 CFR 800.11(e) necessary to support the finding of Adverse Effect, will be forwarded to the SHPO wherein they will, within thirty (30) days, either sign the agreement or request another meeting with PENNDOT to discuss any issues of significant disagreement. Should this meeting fail to resolve the issues, the matter may be elevated and a meeting may be convened between the Secretary of Transportation and the Executive Director of the Pennsylvania Historical and Museum Commission (PHMC) in order to resolve the disagreement. PENNDOT will ensure that the agreed-upon provisions described in the MOU are carried out.

3. Supplementary Review. It is agreed that the formal supplementary review process described below is intended for use in circumstances of significant disagreement only. For the purposes of informal consultation, the SHPO may at his or her discretion, consult via telephone, memorandum, or in a meeting with the Qualified Professionals working on behalf of PENNDOT.

    If, for any 100% state funded undertaking that does not require a federal permit, formal written comment or formal written objection, so titled, is made within 30 days by PENNDOT, the SHPO, or any consulting party, to any findings made by a Qualified Professional regarding: (i) determination that an undertaking exists; (ii) the potential area of an undertaking’s effect; (iii) the eligibility of archaeological or historic properties to the NRHP within the APE; (iv) determinations of effect; (v) applicability of the Manual of Standards and Guidelines adopted pursuant to the PA; (vi) the appropriateness of the Standard Mitigation Measures, the Qualified Professional shall consult, as appropriate, with PENNDOT or the SHPO. If, after consultation, agreement cannot be reached regarding any such findings, the matter may be elevated and a meeting between the Secretary of Transportation and the Executive Director of the PHMC may be convened in order to resolve the disagreement.