

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE U.S. ARMY CORPS OF ENGINEERS, NORFOLK DISTRICT,
THE TENNESSEE VALLEY AUTHORITY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION
REGARDING TRANSPORTATION UNDERTAKINGS SUBJECT TO SECTION
106 OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966**

WHEREAS, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in Virginia through the Virginia Department of Transportation (VDOT) and provides approvals for changes in access to the Interstate System (23 USC 101); and

WHEREAS, the U.S. Army Corps of Engineers, Norfolk District (USACE) administers a Department of the Army permit program under the authority of the Rivers and Harbors Act of 1899, Section 10 (33 USC 401 and 403), and the Clean Water Act of 1973, Section 404 (33 USC 1344), to which highway projects in Virginia may be subject; and

WHEREAS, the Tennessee Valley Authority (TVA) administers a permit program under the authority of the Tennessee Valley Authority Act of 1933, Section 26a (16 USC 831y-1 and 18 CFR 1304), to which highway projects in Virginia may be subject; and, furthermore, lands in TVA custody may be traversed or otherwise utilized in highway projects, requiring TVA approval for the use of those lands; and

WHEREAS, FHWA has determined that construction, maintenance, and emergency relief projects as part of the Federal Aid Highway Program, and related FHWA approvals for changes in access to the Interstate System are undertakings pursuant to Section 106 of the National Historic Preservation Act of 1966 (Section 106; 54 USC 306108), and may have an effect on properties included or eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, USACE has determined that projects authorized by Department of the Army permits are undertakings pursuant to Section 106 and may have an effect on properties included or eligible for inclusion in the NRHP; and

WHEREAS, USACE utilizes its *Programmatic Agreement Among U.S. Army Corps of Engineers, Norfolk District Regulatory Branch, the Advisory Council on Historic Preservation, and the Virginia State Historic Preservation Office Regarding Implementation of the Norfolk District Corps of Engineers Permit Program* (1996 PA), or subsequent revisions thereto; and

WHEREAS, USACE has authorized the Virginia Department of Environmental Quality (VDEQ) to carry out certain Section 106 activities for the State Program General Permit (SPGP) on its behalf through its *Programmatic Agreement Among U.S. Army Corps of Engineers Norfolk District Regulatory Office, Advisory Council on Historic Preservation, Virginia Department of Environmental Quality and Virginia State Historic Preservation Office Regarding Implementation of the Norfolk District Corps of Engineers State Program General Permit and Section 106 of the National Historic Preservation Act (2012 SPGP PA)*; and

WHEREAS, USACE will utilize this Programmatic Agreement (Agreement) for VDOT projects subject to its permits instead of its 2012 SPGP PA; and

WHEREAS, TVA has determined that undertakings authorized by TVA permits or by approval on lands in TVA custody may have an effect on properties included or eligible for inclusion in the NRHP; and

WHEREAS, FHWA, USACE, and TVA have all agreed to delegate major decision-making responsibilities to VDOT and to otherwise improve the efficiency of Section 106 review for VDOT activities involving Federal funding, permits, or approval and have consulted with the Advisory Council on Historic Preservation (ACHP) and the Virginia State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800.14(b), regulations implementing Section 106; and

WHEREAS, pursuant to 36 CFR 800.2(a)(2), FHWA is the lead Federal Agency for administration of this Agreement; and

WHEREAS, FHWA, USACE, and TVA recognize that, as Federal Agencies, they have a unique legal relationship with Federally-recognized Indian tribes (Tribes) as set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes must, therefore, recognize the government-to-government relationship between the Federal government and Tribes; and

WHEREAS, FHWA, as the lead Federal Agency, contacted the following Tribes to solicit their potential interest in transportation undertakings in Virginia and invited their participation in consultation on this Agreement: the Absentee-Shawnee Tribe of Indians of Oklahoma, the Catawba Indian Nation, the Cayuga Nation of New York, the Cherokee Nation (Oklahoma), the Delaware Nation (Oklahoma), the Eastern Band of Cherokee Indians of North Carolina, the Eastern Shawnee Tribe of Oklahoma, the Oneida Nation of New York, the Oneida Tribe of Indians of Wisconsin, the Onondaga Nation of New York, the Saint Regis Mohawk Tribe (New York), the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the Shawnee Tribe (Oklahoma), the Stockbridge Munsee Community (Wisconsin), the Tonawanda Band of Seneca

Indians of New York, the Tuscarora Nation of New York, and the United Keetoowah Band of Cherokee Indians in Oklahoma; and

WHEREAS, the Delaware Nation, the Eastern Shawnee Tribe of Oklahoma, and the United Keetoowah Band of Cherokee Indians in Oklahoma expressed their interest in transportation undertakings in Virginia and have participated in consultation; and

WHEREAS, on July 2, 2015 the U.S. Department of the Interior acknowledged that the Pamunkey Indian Tribe exists as a Tribe within the meaning of Federal law and in accordance with 23 CFR 83, a finding effective on January 28, 2016;

WHEREAS, VDOT, on behalf of FHWA, contacted the following Indian tribes recognized by the Commonwealth of Virginia to solicit their potential interest in transportation undertakings in Virginia and invited their participation on this Agreement: the Cheroenhaka (Nottoway), Chickahominy, Eastern Chickahominy, Mattaponi, Monacan, Nansemond, Nottoway of Virginia, Pamunkey, Patawomeck, Rappahannock, and the Upper Mattaponi tribes; and

WHEREAS, none of the Indian tribes recognized by the Commonwealth of Virginia responded; and

WHEREAS, VDOT maintains cultural resources staff and consultants meeting the Secretary of Interior's Professional Qualifications Standards (Federal Register 48:44738-44739); and

WHEREAS, FHWA has invited VDOT to participate in the consultation and to be a signatory to this Agreement; and

WHEREAS, FHWA activated the *Program Comment for Common Post-1945 Concrete and Steel Bridges* (Federal Register 77(222):68793-68795) for bridges under VDOT's jurisdiction on June 28, 2016; and

WHEREAS, VDOT solicited comments from Tribes, stakeholders, and the public by posting the draft Agreement on its public website for a period of at least 30 days, with affirmative advance notice to individuals and organizations with known or anticipated interest in transportation undertakings in Virginia; and

NOW, THEREFORE, FHWA, USACE, TVA (collectively, the Federal Agencies), VDOT, ACHP, and the SHPO agree that the Federal Agencies' undertakings involving the funding, approval, and/or permitting of VDOT activities, programs or projects shall be reviewed in accordance with the following stipulations in order to satisfy the Federal Agencies' responsibilities under Section 106 for such undertakings.

STIPULATIONS

FHWA, USACE, and TVA shall ensure, for undertakings of their respective agencies, that the following stipulations are carried out:

I. Purpose and Scope

- A. USACE and TVA designate FHWA to act as the lead Federal Agency for Federal Aid highway undertakings and FHWA-approved changes in access to the Interstate System in Virginia that require permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act of 1973, and/or Section 26a of the Tennessee Valley Authority Act of 1933 in accordance with 36 CFR 800.2(a)(2).
- B. In accordance with 36 CFR 800.2(a)(2), TVA designates USACE to act as the lead Federal Agency for undertakings (with no FHWA involvement) that require permits from both TVA and USACE in areas not involving lands owned by the United States that are entrusted to TVA. TVA will act as the lead Federal Agency for undertakings involving lands owned by the United States that are entrusted to TVA, even when USACE also may have a permit action for activities on such lands. USACE designates TVA to act as the lead Federal Agency for undertakings involving lands owned by the United States that are entrusted to TVA when USACE also may have a permit action for activities on such lands.
- C. This Agreement does not relieve any signatory Federal Agency of its responsibility, consistent with 36 CFR 800 2(a), to fulfill the requirements of Section 106, including all findings and determinations. At any point in the Section 106 process, the Federal Agency may participate directly in consultation for any of its undertakings at its discretion. The Federal Agency shall notify the SHPO and other consulting parties of its intentions to participate directly or carry out part or all of Section 106 consultation.
- D. The Federal Agencies, in cooperation with VDOT, may enter into agreements with Tribes which, when executed, will govern consultation practices with such Tribes under the general authority of this Agreement. Consultation with Tribes shall be carried out by the lead Federal Agency. However, VDOT may carry out consultation with Tribes on behalf of the lead Federal Agency with the consent of the lead Federal Agency and the affected Tribe(s).
- E. Except for Stipulations I.C and I.D, VDOT cultural resource staff will follow the process set forth under Stipulation II of this Agreement for each undertaking covered by this Agreement.

- F. The provisions of this Agreement apply only to undertakings involving Federal funding, permitting or approval for which VDOT is carrying out the Section 106 consultation.

II. Consultation Protocol

- A. Streamlined Review Process for Undertakings Not Affecting Historic Properties. VDOT may employ the process described below for FHWA undertakings that do not affect historic properties involving Categorical Exclusion, Programmatic Categorical Exclusion, or Blanket Categorical Exclusion documentation prepared pursuant to the National Environmental Policy Act (NEPA) and for all undertakings for which USACE or TVA is the lead Federal Agency, subject to the restrictions in Stipulation II.A.5.
 - 1. VDOT shall determine the scope of the undertaking and its area of potential effects (APE), as defined in 36 CFR 800.16(d), with explicit attention to the APE for direct, as well as indirect, alterations to the character or use of historic properties.
 - 2. VDOT shall be responsible for determining the scope of identification efforts and for completing the identification of historic properties within the APE in accordance with 36 CFR 800.4(a) 800.4(b), 800.4(c), the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (revised 2011, or subsequent revisions thereto), the Secretary of the Interior's Standards and Guidelines (Federal Register 48:44716-44742), and 36 CFR 63.
 - 3. VDOT shall be responsible for determining if no historic properties are present or affected by the undertaking.
 - a. If formal field surveys are necessary to make a determination of effect, VDOT shall report the results of its identification efforts to the SHPO in a report or Management Summary, as appropriate, as defined in Stipulation IV (Attachment A) of this Agreement.
 - b. If no formal field surveys are necessary to make a determination of effect, or if VDOT does not identify buildings, structures, districts, objects, or sites 50 years of age or greater, or properties less than 50 years of age but of potential exceptional significance (36 CFR 60.4, Criteria Consideration G) within the undertaking's APE, VDOT may make a determination of No Historic Properties Affected without waiting for the SHPO to respond to a Management Summary.
 - c. If VDOT conducts a formal field survey and identifies buildings, structures, districts, objects, or sites 50 years of age or greater, or properties less than 50 years of age but of potential exceptional significance (36 CFR 60.4, Criteria Consideration G) within the undertaking's APE, and a resource's eligibility for listing on the NRHP must be known in order for VDOT to make a determination of effect, VDOT shall consult with the SHPO to

determine the historic significance of the resource in accordance with 36 CFR 800.4(c) prior to determining whether the undertaking will affect historic properties.

4. VDOT shall provide to the SHPO on a monthly basis a report of undertakings determined by VDOT to have no historic properties present or affected, as defined in Stipulation IV (Attachment A.2) of this Agreement. VDOT may proceed to implement the undertakings without any further Section 106 consultation.
 - a. If the SHPO objects to any finding included in the monthly report it shall inform VDOT in writing of its objection within fifteen (15) calendar days of receipt of the report. All work on the undertaking in question shall cease while consultation between VDOT and the SHPO on that project occurs to resolve the objection. If VDOT is unable to resolve the objection, the objection will be referred to the lead Federal Agency that will follow the requirements of 36 CFR 800.5(c)(2).
 - b. VDOT shall report the determinations from the monthly report to the appropriate Federal Agencies with explicit reference that the findings have been made pursuant to Stipulation II.A of this Agreement.
 - c. VDOT shall make the monthly report available for inspection on its public web site.
 - d. VDOT, in consultation with the SHPO, FHWA, USACE and TVA, shall review the results of Stipulation II.A.4 on an annual basis to ensure its proper implementation.
5. VDOT shall not employ the streamlined process defined in Stipulation II.A for undertakings involving any of the factors listed below.
 - a. An Environmental Assessment or Environmental Impact Statement is required by FHWA;
 - b. National Historic Landmarks (NHLs);
 - c. Historic Preservation Easements held by the Commonwealth of Virginia's Board of Historic Resources;
 - d. Known or anticipated concerns from local governments, consulting parties, or potential consulting parties (36 CFR 800.2(c)(5)) about the effect of the undertaking on historic properties; or
 - e. If the SHPO or ACHP request that VDOT submit the finding for review.

B. Standard Review Process.

1. Initiation of the Section 106 Process

- a. VDOT shall initiate Section 106 consultation in accordance with the requirements of 36 CFR 800.3 as early as reasonably possible in project development, typically concurrent with project

- scoping activities carried out for compliance with the provisions of NEPA.
- b. VDOT may use its NEPA scoping process to invite local governments to participate in the Section 106 process for undertakings that may affect historic properties within those jurisdictions provided that the scoping communication includes sufficient information about the Section 106 process to inform the local government(s) of its right to participate in Section 106 in accordance with 36 CFR 800.2(c)(3).
 - c. In carrying out consultation pursuant to this Agreement, VDOT shall identify the lead Federal Agency and shall promptly inform the SHPO and other consulting parties of that Federal Agency's involvement and any other Federal assistance, permit, or approval anticipated for the undertaking, as well as any changes to Federal involvement that may occur.
 - d. For undertakings for which FHWA is the lead Federal Agency, VDOT shall determine the scope of the undertaking and its area of potential effects (APE), as defined in 36 CFR 800.16(d), with explicit attention to the possible difference in the APE for direct and indirect effects to historic properties. VDOT shall consult with the SHPO on the determination of the APE.
 - e. For undertakings for which USACE or TVA is the lead Federal Agency, VDOT shall consult with the lead Federal Agency on the definition of the APE.
2. Involvement of Consulting Parties and the Public
- a. VDOT shall identify consulting parties pursuant to 36 CFR 800.2(c) and 800.3(f). VDOT shall invite those parties entitled to participate in the Section 106 process to be consulting parties. In consultation with the SHPO, VDOT shall identify and invite additional consulting parties as defined in 36 CFR 800.2(c) to participate in Section 106 consultation in a manner appropriate to the scale of the undertaking and the scope of Federal involvement. VDOT shall consult with the SHPO and the lead Federal Agency before denying a request for consulting party status.
 - b. VDOT may involve the public in the Section 106 process through its established public involvement program approved by FHWA in compliance with 23 CFR 771.111(h)(1). VDOT shall ensure that statements citing the Section 106 process and concerning anticipated or verified adverse effects on historic properties are included in published notices of public meetings or hearings and that detailed information is available at the public meetings or hearings. Public comments shall be solicited in the published notices and at the meetings or hearings. VDOT shall notify all consulting parties of public involvement

- opportunities, but not as a substitute for the active participation of consulting parties as required by 36 CFR 800.
- c. VDOT, in consultation with the SHPO, shall incorporate information on public involvement in the Section 106 process into its public web site within 120 days following the date of the last signature by a signatory party to this Agreement. VDOT shall inform the SHPO, the Federal Agencies, and ACHP when this information is available on its public web site.
3. Identification and Evaluation of Historic Properties
- a. VDOT shall be responsible for determining the scope of identification efforts and for completing the identification of historic properties within the APE in accordance with 36 CFR 800.4(a) 800.4(b), and 800.4(c), the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (revised 2011, or subsequent revisions thereto), and the Secretary of the Interior's Standards and Guidelines (Federal Register 48:44716-44742), and 36 CFR 63.
 - b. VDOT shall report the results of its identification efforts to the SHPO and other consulting parties in accordance with Stipulation IV (Attachment A) of this Agreement.
 - c. If VDOT identifies buildings, structures, districts, objects, or sites 50 years of age or greater, or properties less than 50 years of age but of potential exceptional significance (36 CFR 60.4, Criteria Consideration G) within the undertaking's APE, VDOT shall consult with the SHPO and other consulting parties to determine their historic significance in accordance with 36 CFR 800.4(c).
 - d. VDOT shall use the resulting documentation to proceed with consultation pursuant to 36 CFR 800.4 through 800.6.
 - e. For FHWA-funded projects involving consideration of multiple alternatives, alignments, or corridors, VDOT may perform phased identification of historic properties in accordance with 36 CFR 800.4(b)(2) and the following provisions:
 - i. VDOT shall complete efforts to identify NRHP-eligible buildings, structures, non-archaeological districts, objects, and sites (e.g., non-archaeological battlefields, landscapes) for all candidate alternatives, alignments, or corridors carried forward for detailed study.
 - ii. VDOT may complete efforts to identify NRHP-eligible archaeological resources only on the preferred alternative, alignment, or corridor provided that it carries out sufficient research and analysis, in consultation with the SHPO and other consulting parties, to ensure that archaeological issues are taken into account in determining a preferred alternative, alignment, or corridor, specifically with regard to predicting the likely presence or absence of sites valued chiefly for

- preservation and to the relative potential effects on significant archaeological sites between candidate alternatives, alignments, or corridors.
- iii. For undertakings where FHWA is not the lead Federal Agency, the lead Federal Agency shall determine, after reviewing the documentation produced by VDOT in accordance with Stipulation II.B.3.e.2, whether VDOT shall be required to identify NRHP-eligible archaeological sites on all candidate alternatives, alignments, or corridors carried forward for detailed evaluation. If so required, VDOT shall carry out such identification efforts in accordance with Stipulations II.B.3.a and II.B.3.b.
4. Assessment of Effect(s) and Resolution of Adverse Effects.
- a. No Historic Properties Affected
If VDOT finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in 800.16(i), VDOT shall provide the documentation of its finding to the SHPO and other consulting parties in accordance with 36 CFR 800.4(d). If the SHPO or other consulting party objects to a finding of “no historic properties affected,” and VDOT is unable to resolve that objection, the objection will be referred to the lead Federal Agency who will follow the requirements of 36 CFR 800.5(c)(2).
 - b. No Adverse Effects
 - i. Except as provided for under Stipulations III.F (Historic Bridges) and VII.B (Emergency Response), if VDOT applies the criteria of adverse effect to historic properties within the APE in consultation with the SHPO and other consulting parties, including the Tribes, and proposes a finding of no adverse effect, VDOT shall consult with the SHPO and other consulting parties, including the Tribes, in accordance with 36 CFR 800.5(b) through 800.5(d). If the SHPO or another consulting party objects to a finding of “no adverse effect,” and VDOT is unable to resolve that objection, the objection will be referred to the lead Federal Agency who will follow the requirements of 36 CFR 800.5(c)(2).
 - ii. VDOT shall require all non-VDOT parties responsible for carrying out conditions or commitments associated with no adverse effect determinations to agree in writing to carry out such measures.
 - iii. Except as provided for under Stipulations III.F and VII.B, VDOT shall provide the lead Federal Agency with a copy of all no adverse effect determinations, along with the SHPO’s concurrence and any comments from other consulting parties.
 - c. Resolving Adverse Effects

- i. For undertakings that VDOT has determined may result in adverse effects, VDOT shall assess and attempt to resolve adverse effects in accordance with 36 CFR 800.6 and other provisions of this Agreement.
- ii. VDOT shall notify ACHP and the lead Federal Agency of all adverse effect findings, provide documentation specified in 36 CFR 800.11(e), and invite ACHP to participate in a manner consistent with 36 CFR 800.6(a)(1)(i). VDOT shall copy all consulting parties, including Tribes, when it notifies ACHP.
- iii. VDOT shall involve consulting parties and the public in its efforts to resolve adverse effects in a manner consistent with 36 CFR 800.6(a)(2), 800.6(a)(3), and 800.6(a)(4). VDOT shall copy the lead Federal Agency on all communications with consulting parties and the public.
- iv. If VDOT, the lead Federal Agency, the SHPO, and ACHP (if participating in consultation) agree on measures to resolve the adverse effects, VDOT shall draft a Memorandum of Agreement (MOA) or Programmatic Agreement (PA). VDOT shall prepare all MOAs/PAs in accordance with 36 CFR 800.6(b) and 800.6(c). The lead Federal Agency shall review the draft MOA/PA and make any necessary revisions. The lead Federal Agency shall be a signatory to the MOA/PA. VDOT shall invite any additional Federal Agencies that are involved in an undertaking to be a signatory to any MOA/PA developed under this paragraph, unless those agencies already have designated a lead Federal Agency.
- v. VDOT may reference Stipulations V and VI (Attachments B and C) of this Agreement in MOAs/PAs as the content for provisions concerning post-review discoveries and human remains.
- vi. VDOT shall be a signatory to all agreements prepared in accordance with 36 CFR 800.6(b).
- vii. VDOT shall offer consulting parties (viz. 36 CFR 800.2(c)(5)) that have participated in consultation the opportunity to concur in MOAs/PAs in accordance with 36 CFR 800.6(c)(3).
- viii. If VDOT, the lead Federal Agency, the SHPO, and ACHP (if participating in consultation) cannot agree on measures to resolve adverse effects, the lead Federal Agency, the SHPO, or ACHP may terminate consultation in accordance with 36 CFR 800.7(a) and the lead Federal Agency then shall request, consider, and respond to ACHP formal comments prior to approving the undertaking, in accordance with 36 CFR 800.7(c).
- ix. VDOT shall assist the lead Federal Agency in notifying and inviting the Secretary of the Interior to participate in

consultation when an undertaking may directly and adversely affect a National Historic Landmark in accordance with 36 CFR 800.10.

- x. For undertakings with ACHP participation, VDOT and the lead Federal Agency may proceed to authorize the project once the MOA/PA is signed by all signatories. For undertakings without ACHP participation, VDOT and the lead Federal Agency may proceed to authorize the project once the MOA/PA is signed by all signatories and filed with ACHP.

C. Re-evaluation of Findings

1. VDOT shall re-evaluate all Section 106 findings and determinations for active undertakings that have not been authorized for right-of-way acquisition, or if no right-of-way is required, undertakings that have not been authorized for construction within five (5) years following completion of Section 106. The reevaluation shall establish whether, following the passage of time, in light of additional research, information, preservation standards concerning historic properties, or changes in project design, the findings and documentation concerning the undertaking remain accurate. VDOT shall submit re-evaluations carried out pursuant to this stipulation to the SHPO for concurrence, and to other consulting parties, including Tribes, for review and comment. VDOT shall make the re-evaluation available to the public upon request.
2. The SHPO reserves the right to request a re-evaluation of Section 106 findings and determinations in a shorter time frame in special circumstances justifying reconsideration, such as high growth areas, growth in current knowledge, or increasing rarity of property type.

III. Historic Bridge Program

- A. FHWA, VDOT, and the SHPO, with the assistance of the Virginia Transportation Research Council (VTRC), shall collaborate on issues concerning historic bridges under VDOT's jurisdiction through an interagency Historic Structures Task Group (HSTG). The HSTG shall include expertise on engineering, history, archaeology and other disciplines as necessary for making recommendations to the participating agencies concerning the eligibility of bridges and other structures or objects under VDOT jurisdiction for listing in the NRHP and for recommending treatment actions on those structures determined to be historic.
- B. For bridges evaluated for eligibility and documented in the *Memorandum of Agreement Between the Virginia Department of Transportation and the Virginia Department of Historic Resources Concerning the Eligibility of Bridges for Listing in the Virginia*

Landmarks Register and the National Register of Historic Places (1997), VDOT, through the HSTG, shall reassess those determinations in consultation with local governments and other consulting parties, specifically including local historical societies, commissions, and/or local preservation organizations. VDOT shall complete this effort within two (2) calendar years following the execution of this Agreement. VDOT may consult with local governments and other consulting parties on an undertaking-specific basis as necessitated by project development schedules.

- C. Programmatic or undertaking-specific consensus eligibility determinations made in consultation with the SHPO subsequent to 1997, including those for steel-beam/timber deck structures (2001, Attachment D), steel-beam/non-timber deck structures (2008, Attachment E), and culvert structures/low-water bridges (2010, Attachment F) are not subject to the reassessment program described in Stipulation III.B and those determinations are hereby validated for use in Federal undertakings until such time as reassessments are performed. VDOT, through the HSTG, shall reassess those determinations according to the following schedule:
1. steel-beam/timber deck structures (December 31, 2016)
 2. steel-beam/non-timber deck structures (December 31, 2016)
 3. culvert structures, low-water bridges (December 31, 2017)
- Following this initial reassessment, VDOT, through the HSTG, shall reassess those determinations on a seven (7) year cycle for each structural type. Structures within the scope of the *Program Comment for Common Post-1945 Concrete and Steel Bridges* (Federal Register 77(222):68793-68795) shall not be subject to the reassessment provisions of this stipulation.
- D. In consultation with the signatories to this Agreement, VDOT will develop a plan for soliciting the views of local governments, preservation organizations, and the public in its reassessment of National Register eligibility of historic bridges. In addition to direct notification, VDOT shall include a page for its historic bridge program on VDOT's public web site. VDOT may use that page for soliciting the views of local governments and other consulting parties pursuant to Stipulation III.B and to provide information about the Commonwealth's historic bridges and undertakings involving those structures.
- E. The Federal Agencies and the SHPO shall accept the findings on the NRHP-eligibility of bridges administered by VDOT made by the SHPO and VDOT pursuant to the *Memorandum of Agreement Between the Virginia Department of Transportation and the Virginia Department of Historic Resources Concerning the Eligibility of Bridges for Listing in the Virginia Landmarks Register and the National Register of Historic*

Places (1997) while VDOT is consulting with local governments and other parties in accordance with Stipulation III.B, above, provided that VDOT solicit the views of the appropriate local government and other parties in the eligibility decision and provides 30 days for their response on an undertaking-specific basis. If a local government or other party recommends that an existing finding be changed, VDOT shall reconsider that finding through the HSTG in accordance with Stipulation III.A.

- F. All Federal undertakings involving the rehabilitation of historic bridges carried out by VDOT pursuant to *A Management Plan for Historic Bridges in Virginia* (2001, or subsequent revisions thereto) may proceed with no additional consultation provided that the rehabilitation is carried out in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as determined by VDOT's professional cultural resource staff and that no other historic properties are affected by the undertaking. VDOT may report all such rehabilitation actions to the SHPO as having no adverse effect on historic properties as part of its monthly reporting pursuant to Stipulation II.A.4 or by individual notification. In implementing this Stipulation, VDOT shall be cognizant of the potential aesthetic and/or design interests of other consulting parties and consult as appropriate to consider those views in developing the final design of the rehabilitation project.
- G. VDOT, FHWA, and the SHPO shall update *A Management Plan for Historic Bridges in Virginia* (2001) with the assistance of the VTRC every five years; initially to be completed within three (3) years after the reassessment described in Stipulation III.B is completed and no later than January 1, 2019.
- H. All Federal undertakings involving bridges listed in or eligible for listing in the NRHP and not meeting the conditions of Stipulation III.F shall be carried out in accordance with the requirements of Stipulations I and II of this Agreement.

IV. Documentation and Reporting

VDOT shall prepare and submit documentation and reports pursuant to this Agreement in accordance with Attachment A.

V. Post Review Discoveries

VDOT shall administer post-review discoveries pursuant to this Agreement in accordance with Attachment B.

VI. Human Remains

VDOT shall treat human remains pursuant to this Agreement in accordance with Attachment C.

VII. FHWA Emergency Relief Program

- A. For emergency undertakings funded through FHWA's Emergency Relief (ER) program (23 USC 125; 23 CFR 668) that VDOT reasonably anticipates will be initiated within 30 days of a declared emergency, no further Section 106 consultation is necessary if VDOT determines that historic properties are not present or will not be adversely affected. VDOT shall report such actions to the SHPO in the next monthly report following the emergency action prepared in accordance with Stipulation II.A.4.
- B. If VDOT determines that an undertaking funded through FHWA's ER program may adversely affect historic properties and reasonably anticipates that the undertaking will be initiated within 30 days of a declared emergency, VDOT shall implement the following expedited consultation procedure:
1. VDOT shall notify FHWA, the SHPO, any consulting Tribe(s), and any additional consulting parties that it intends to implement expedited consultation in accordance with this stipulation. VDOT may proceed with expedited consultation provided that the SHPO does not object within two (2) business days.
 2. VDOT may combine steps of expedited consultation defined in this stipulation.
 3. VDOT shall determine if historic properties are present within the undertaking's APE and shall request the SHPO's concurrence that properties should be considered eligible by consensus for Section 106 purposes. The SHPO shall respond to any such request within five (5) business days. VDOT may assume concurrence with the request if the SHPO does not respond within five (5) business days.
 4. VDOT shall provide the SHPO with available documentation about the condition of the property(ies), the proposed action, and prudent and feasible treatment measures that would take the adverse effect into account, and request the SHPO's comments. VDOT may furnish this information to the SHPO through correspondence, electronic media, or meetings, at its discretion. The SHPO shall respond to any such VDOT request for comments within five (5) business days, and VDOT shall take into account such timely filed comments before proceeding. VDOT may proceed with the proposed action and treatment measures should the SHPO not respond or not object within five (5) business days.
 5. If the SHPO or a consulting Tribe objects to the documentation provided or to the proposed treatment measures, VDOT shall consult with the FHWA and the objecting party and attempt to resolve the dispute. If the dispute is not resolved, FHWA shall

request ACHP's advice in accordance with Stipulation VIII.E and 36 CFR 800.2(b)(2). ACHP may advise FHWA within five (5) business days of receipt of the request. FHWA will take into account the timely advice submitted by ACHP before deciding how it and VDOT will proceed.

6. VDOT shall provide the SHPO and any additional consulting parties a narrative report documenting the decisions made in accordance with this expedited consultation process within six (6) months following the initiation of expedited consultation.
- C. VDOT shall follow the procedures defined elsewhere in this Agreement for all ER undertakings to be initiated more than 30 days following declaration of an emergency.

VIII. Administrative Procedures

- A. VDOT shall ensure that all cultural resource work carried out pursuant to this Agreement shall be carried out by or under the direction of VDOT staff meeting the qualifications set forth in the Secretary of Interior's Professional Qualifications Standards (Federal Register 48:44738-44739) in the appropriate discipline.
- B. VDOT shall transfer field notes, associated field survey information, and artifacts recovered from state-owned or controlled land to the custody of the SHPO or to a curatorial facility that meets the standards of 36 CFR 79. VDOT shall transfer artifacts recovered from private property to the custody of the SHPO or to a curatorial facility that meets the standards of 36 CFR 79 only with the consent of the property owner.
- C. VDOT shall cooperate with and assist the SHPO and the lead Federal Agency in responding to public inquiries concerning undertakings subject to this Agreement.
- D. Monitoring
1. The SHPO and ACHP may monitor activities carried out pursuant to this Agreement, and ACHP may review such activities if so requested as per 36 CFR 800.2(b)(1) and (b)(2). The Federal Agencies and VDOT shall cooperate with ACHP and the SHPO in carrying out their monitoring and review responsibilities under this Agreement. The Federal Agencies may review activities carried out by VDOT pursuant to this Agreement to ensure that its provisions are satisfied. In the event that the SHPO, ACHP, the Federal Agencies, or VDOT find that the provisions are not satisfied, the parties shall follow the process described in Stipulation VIII.E.

2. VDOT shall invite the Federal Agencies, the SHPO, and ACHP to participate in an Annual Meeting to discuss and review its performance in carrying out the terms of this Agreement. VDOT shall conduct the meeting no later than March 31 of each year beginning in 2017. VDOT shall prepare an annual monitoring report of activities carried out under this Agreement, including any problems experienced and suggestions for modification or improvement, and shall submit that report to the signatories at least thirty days prior to the Annual Meeting. VDOT shall make the report available on its public web site concurrent with its distribution to the signatories and shall provide notice of the date, location, and time of the Annual Meeting. The Annual Meeting shall be open to the public and the public shall be allowed an opportunity to offer comments at the Annual Meeting.
3. The signatories to this Agreement shall confer annually to determine the need to modify or amend this Agreement.

E. Dispute Resolution

Should any signatory to this Agreement object in writing to the manner in which this Agreement is implemented, VDOT shall consult with the objecting party(ies) to resolve the objection. If VDOT determines that such objection(s) cannot be resolved, it shall request the assistance of FHWA in resolving the objection. If FHWA determines that the objection remains unresolved, FHWA shall forward all documentation relevant to the dispute to ACHP in accordance with 36 CFR 800.2(b)(2). ACHP shall review and advise FHWA on the resolution of the dispute within 30 days. Any timely comment provided by ACHP, and all timely comments from the signatories to this Agreement, shall be taken into account by FHWA, VDOT, and objecting party(ies) in reaching a final decision regarding the dispute.

The responsibility of the VDOT and the other Agreement signatories to carry out all other actions subject to the terms of this Agreement that are not the subjects of the objections shall remain unchanged. The Agreement signatories understand that this stipulation is limited to resolving disputes concerning implementation of this Agreement, and that disputes concerning individual undertakings are to be resolved in accordance with 36 CFR 800.

F. Duration, Termination, Withdrawal, Modification and Amendment

1. This Agreement applies to all undertakings within its scope for which Section 106 has not been completed by the last date of signature.
2. This Agreement shall continue in full force and effect for a period of 5 (five) years from the last date of signature. At any time prior to expiration of this Agreement, the signatories may agree to extend it

for an additional term, not to exceed 5 years. The extension will take effect upon the written agreement of the signatories. Additional extensions shall extend the Agreement for no more than a total of 15 (fifteen) years from the original execution date.

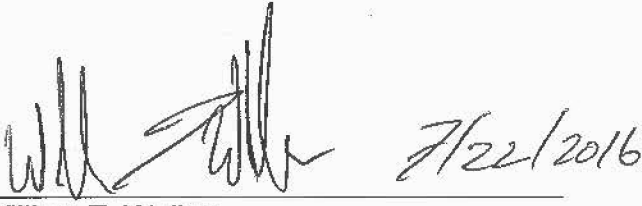
3. Any signatory party to this Agreement may propose to FHWA that the Agreement be amended, whereupon the FHWA will consult with the other parties to this Agreement to consider such an amendment. All signatories to this Agreement must agree in writing to the proposed amendment for such amendment to be valid.
4. FHWA, ACHP, the SHPO or VDOT may terminate this Agreement by providing thirty (30) calendar days written notice to all other signatories, provided that the parties shall 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 Federal Agency(ies) and VDOT shall carry out consultation for individual undertakings pursuant to the requirements of Section 106.
5. USACE or TVA may withdraw from participation in this Agreement by notifying the other signatory parties in writing. In the event that either USACE or TVA withdraws in writing, the withdrawing agency shall carry out consultation for individual undertakings pursuant to the requirements of Section 106 or another applicable alternative under 36 CFR 800.14. However, this Agreement will remain in effect for all other signatory agencies, amended as necessary to document the withdrawal of either USACE or TVA.

This Agreement may be executed in counterparts, with a separate page for each signatory. FHWA shall ensure that each party is provided with a copy of the fully executed Agreement.

Execution of this Agreement and implementation of its terms evidence that the signatory Federal Agencies have afforded ACHP an opportunity to comment on the undertakings identified in this Agreement and that the signatory Federal Agencies have taken into account the effects of these undertakings on historic properties.

 7-20-16

Jessie Yung, Acting Division Administrator
Federal Highway Administration, Virginia Division

Handwritten signature of William T. Walker and the date 7/22/2016.

William T. Walker
Chief, Regulatory Branch
USACE, Norfolk District

 7/25/16


Wilbourne C. Markham, Jr.
Tennessee Valley Authority

Handwritten signature of John M. Fowler in cursive script.

8/2/10

John M. Fowler, Executive Director
Advisory Council on Historic Preservation


Julie V. Langan 7/21/16
Virginia State Historic Preservation Officer


Angel N. Deem, Environmental Administrator
Virginia Department of Transportation

ATTACHMENT A: Documentation and Reporting

1. VDOT shall keep consulting parties informed of progress in the Section 106 review process and shall provide them with copies of documentation as described in 36 CFR 800.11, as appropriate. VDOT is responsible for providing copies of all findings and determinations for projects requiring an Environmental Assessment or Environmental Impact Statement to the lead Federal Agency after the SHPO's concurrence, response, or as prescribed in this Agreement. In all permit applications submitted by VDOT to the USACE or TVA, and for non-reporting permits involving effects to historic properties, VDOT shall provide these permitting agencies with documentation on all findings and determinations.
2. VDOT's monthly report pursuant to Stipulation II.A.4 shall include the following information:
 - a. VDOT Project Number(s)
 - b. Project Name
 - c. SHPO Review File Number (if available)
 - d. City and/or County
 - e. VDOT District
 - f. Project Description
 - g. Effect Determination
 - h. Explanation of Effect Determination Basis
 - i. Effect Determination Date
 - j. Responsible Federal Agency and other Federal Agencies with jurisdiction.
3. If archaeological resources meeting the definition of "site" according to the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia* (revised 2011, or subsequent revisions thereto) are identified during an archaeological survey ("Phase I") within the undertaking's APE, VDOT may report those findings to the SHPO and consulting parties in the abbreviated format described below:
 - a. title page
 - b. abstract
 - c. table of contents
 - d. list of maps, illustrations, tables
 - e. description of the area surveyed
 - f. survey strategy (objectives, methods, expected results)
 - g. findings and recommendations
 - h. summary list of identified sites within the undertaking's APE with recommendations concerning potential NRHP eligibility
 - i. bibliography
 - j. appendices as necessary (e.g., artifact inventory)

4. If no archaeological resources are identified within the undertaking's APE, VDOT may report that finding to the SHPO and other consulting parties in a Management Summary (including a description of survey strategy and acres surveyed).
5. If non-archaeological resources (buildings, structures, districts, objects, sites) at least 50 years of age are identified through survey within the undertaking's APE, VDOT shall report those findings to the SHPO through a Management Summary supported by electronic inventory records ("reconnaissance-level"). VDOT shall utilize the electronic inventory records to determine the potential NRHP eligibility of identified buildings, structures, districts, objects, and sites (non-archaeological) in consultation with the SHPO and other consulting parties. VDOT shall provide copies of the inventory records to other consulting parties participating in consultation in an acceptable medium.
6. If no buildings, structures, districts (non-archaeological), objects, or sites 50 years of age or greater are identified within the undertaking's APE, VDOT may report that finding to the SHPO and other consulting parties in a Management Summary (including a description of survey strategy and acres surveyed).
7. Notwithstanding the provisions of Attachment A.3 through A.6, VDOT and the SHPO may define and implement alternative practices to document buildings, structures, districts, objects, and sites dating to the post-World War II period on an undertaking-specific basis.
8. If additional investigation is necessary to determine conclusively the significance of identified buildings, structures, districts (non-archaeological), objects, or sites (non-archaeological; e.g., battlefields, landscapes), VDOT shall carry out the investigation and may report these findings to the SHPO and other consulting parties via electronic evaluation ("intensive-level") records ("Phase II" study), or may assume the site's NRHP eligibility for Section 106 purposes. VDOT shall provide copies of the inventory records to other consulting parties participating in consultation in an acceptable medium.
9. VDOT, in consultation with the SHPO, shall develop geographic information system (GIS) functional requirements to document the location of known historic properties on its rights-of-way to facilitate avoidance during highway maintenance and incidental construction projects. VDOT shall complete the functional requirements documentation within two (2) years following execution of this PA. The SHPO shall support VDOT's efforts to seek funding to implement such system enhancements as a high-priority interagency initiative.

ATTACHMENT B: Post- Review Discoveries

1. VDOT shall resolve post-review discoveries that occur prior to construction in accordance with 36 CFR 800.13(b)(1) or (b)(2).
2. In the event that previously unidentified potential historic properties are discovered within the APE during project construction or if unanticipated effects on historic properties occur during construction activities, VDOT shall immediately halt all construction work in the area of the resource and, for any discovered archaeological resources, in surrounding areas where additional subsurface remains can reasonably be expected to occur and be disturbed by project construction. Construction work in all other areas of the project may continue. VDOT shall inform the lead Federal Agency of its determination of where construction activities may continue.
3. VDOT shall notify the lead Federal Agency and SHPO within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, VDOT shall assist the lead Federal Agency in notifying appropriate Tribes that may attach religious and cultural significance to the property(ies) within two (2) working days of the discovery.
4. VDOT shall ensure that an archaeologist or architectural historian qualified pursuant to Stipulation VIII.A shall investigate the work site and the resource, and shall forward an assessment of the NRHP eligibility of the resource and proposed treatment actions to resolve adverse effects to the lead Federal Agency, SHPO, and Tribes (through the lead Federal Agency). The SHPO shall respond within five (5) working days of receipt of VDOT's assessment of NRHP eligibility of the resources and/or the proposed treatment plan. VDOT shall take into account the recommendations of the SHPO, and Tribes regarding NRHP eligibility of the resources and/or the proposed treatment plan to resolve adverse effects, and then carry out appropriate actions.
5. VDOT 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 inclusion in the NRHP.

ATTACHMENT C: Human Remains

1. VDOT shall treat human remains in a manner consistent with the ACHP “Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects” (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).
2. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in a manner consistent with the Virginia Antiquities Act (*Code of Virginia* 10.1-2305) and its implementing regulation (17VAC5-20), adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991.
3. If the human remains are likely to be of Native American origin and are located on lands controlled or owned by the U.S. Government, VDOT shall inform the Federal land managing agency, and the Federal land managing agency will assume responsibility for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA; 25 USC 3001)
4. In the event that the human remains encountered on lands not controlled or owned by the U.S. Government are likely to be of Native American origin, whether prehistoric or historic, the lead Federal Agency, with the assistance of VDOT, shall immediately notify the appropriate Tribes. The lead Federal Agency, with the assistance of VDOT, shall determine the treatment of Native American human remains and associated funerary objects in consultation with the appropriate Tribes.
5. The lead Federal Agency and VDOT shall make all reasonable efforts to ensure that the general public is excluded from viewing any Native American gravesites and associated funerary objects. The signatories to this PA shall release no photographs of any Native American gravesites or associated funerary objects to the press or to the general public, subject to the requirements of the Federal Freedom of Information Act (5 USC 552), the National Historic Preservation Act (54 USC 307103), and other laws as applicable.

ATTACHMENT D: Steel Beam/Timber Deck Structures (2001)



COMMONWEALTH of VIRGINIA
Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221



James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

January 11, 2001

H. Alexander Wise, Jr.
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
TDD: (804) 367-2386

Antony F. Opperman
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219-1939

Re: VDOT Bridge Eligibility
DHR File No. 2000-1116

Dear Mr. Opperman:

Thank you for requesting our concurrence with the updated lists of VDOT bridges determined eligible or not eligible for inclusion in the National Register of Historic Places. The review of steel beam and timber deck bridges represents the continuing work of our agencies, through the interagency Historic Structures Task Group, to evaluate the significance of historic bridges in Virginia.

Our Memorandum of Agreement dated October 23, 1997 defines how bridge types are to be surveyed and evaluated. By the original document and amendments, we have evaluated Covered Bridges, Metal Truss Bridges, Arched Masonry bridges, Moveable Span Bridges, and Non-Arched Concrete Bridges.

VDOT's inventory list of in-service steel beam and timber deck bridges (received here on September 11, 2000) identifies 3,249 such bridges, many of which are built from standard plans that are still in use. The DHR's National Register Evaluation Team has considered the resource type in general, with direct consideration of many examples, and we agree that none of these bridges represent significant engineering, transportation, or construction achievement. We agree that none of these resources are individually eligible for listing in the National Register, and we accept this amended list of eligible/non-eligible bridges to our MOA.

The MOA specifies that resources of this type might be considered contributing elements in National Register historic districts, should such districts be present and the particular bridge were consistent with the district's recognized areas and periods of significance.

Please contact me at (804) 367-2323, extension 105, if you have any questions or if I can be of further assistance.

Sincerely,

Cara H. Metz, Director

Resource Services and Review

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ATTACHMENT E: Steel Beam/Non-Timber Deck Structures (2008)



COMMONWEALTH of VIRGINIA

Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221-0311

L. Preston Bryant, Jr.
Secretary of Natural Resources

Kathleen S. Kilpatrick
Director

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14 March 2008

Mr. Tony Opperman
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Re: Evaluation of Steel Beam/Concrete Deck Bridges
Statewide
DHR File # 2006-1017

Dear Mr. Opperman:


The Department of Historic Resources' (DHR) Architectural Evaluation Team would like to thank you and the other members of the Historic Structures Task Group (HSTG) for coming in to explain more fully and to answer questions about the proposal by the Virginia Department of Transportation (VDOT) to exempt from evaluation to the National Register of Historic Places and the Virginia Landmarks Register steel beam/concrete deck bridges. The Evaluation Team believes that this exercise was helpful for its members to understand VDOT's position and the implications of such an approach to address this classification of bridges. Upon consideration of the information provided by the HSTG and through earlier correspondence on this subject, the Evaluation Team agrees that as a type of bridge, steel beam/concrete deck structures are generally not eligible for listing to the National Register or Virginia Landmarks Register and, therefore, will require no further evaluation from the HSTG or DHR. However, as discussed at our meeting, we believe that in the following special cases, VDOT must continue to consult with DHR on the eligibility of steel beam/concrete bridges:

- Those bridges with the characteristics outlined on page 2 of the 1 September 2006 letter from John Wells to Ms. Kathleen Kilpatrick.
- Bridges that may be significant under Criterion A for an event or pattern in history such as an association with a Civil Rights march or construction by the Civilian Conservation Corps (CCC).

It should be noted that the Evaluation Team also accepts VDOT's recommendation that steel beam/concrete bridges constructed in 1934 and later be covered under this arrangement as that is the year when the county road systems were folded into the state system and a centralized standardization began to occur.

If you have any questions regarding our comments, please call me at (804) 367-2323, Ext. 114.

Sincerely,


Marc Holma, Manager
Office of Review and Compliance

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ATTACHMENT F: Culvert Structures/Low-Water Bridges (2010)



COMMONWEALTH of VIRGINIA

Department of Historic Resources

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13 October 2010

Mr. Tony Opperman
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Re: Evaluation of Culverts
Statewide
DHR File # 2010-1872

Dear Mr. Opperman:

The Department of Historic Resources' (DHR) Architectural Evaluation Team would like to thank you and the other members of the Historic Structures Task Group (HSTG) for coming in to explain more fully and to answer questions about the proposal by the Virginia Department of Transportation (VDOT) to exempt from evaluation to the National Register of Historic Places (NRHP) and the Virginia Landmarks Register (VLR) culverts owned and maintained by VDOT. Specifically, our meeting of 22 September 2010 addressed the exemption of four classifications of culverts, namely, pipe culverts, concrete drainage structures (including precast/cast-in-place box culverts), low water bridges, and small non-arched (slab) concrete bridges or culverts built prior to 1950. The Evaluation Team believes that this exercise was helpful for its members to understand VDOT's position and the implications of such an approach to address this classification of structure. Upon consideration of the information provided by the HSTG, the Evaluation Team agrees that as a type of structural resource, culverts are generally not eligible for listing to the NRHP or the VLR and, therefore, will require no further evaluation from the HSTG or the DHR. However, the Evaluation Team also believes that culverts falling under one or more of the characteristics listed in the undated handout provided at the 22 September meeting should still be evaluated individually by the HSTG.

Thank you for your assistance in this matter.

If you have any questions regarding our comments, please contact Marc Holma at (804) 367-2323, Ext. 114.

Sincerely,


Julie Langan, Director
Department of Resources Services and Review

C: Ms Ann Miller, TRC

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