

Memorial Bridge Replacement Project  
Portsmouth, NH-Kittery, ME  
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**Memorandum of Agreement**  
**SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**  
**PURSUANT TO 36 CFR PART 800.6(a)**

WHEREAS, the NH Division of the Federal Highway Administration (NHFHWA) and the Maine Division of the Federal Highway Administration (MEFHWA) propose the replacement of all spans of the Memorial Bridge that carries US Route 1 over the Piscataqua River between Portsmouth, NH and Kittery, Maine; and

WHEREAS, the NHFHWA and MEFHWA in consultation with the NH State Historic Preservation Officer (NHSHP) and the Maine State Historic Preservation Officer (MESHPO) and pursuant to regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) have determined that the proposed undertaking will have an adverse effect on the following properties that are eligible for listing in the National Register of Historic Places:

Memorial Bridge Historic District, Portsmouth, NH and Kittery, Maine  
Scott Avenue Bridge, Portsmouth, NH  
Memorial Bridge (lift span and two flanking spans), Portsmouth, NH and Kittery, Maine  
Memorial Park, Portsmouth, NH  
Portsmouth Historic District, Portsmouth, NH  
John Paul Jones Memorial Park, Kittery, Maine

and;

WHEREAS, the NHFHWA and the MEFHWA have agreed that the New Hampshire Department of Transportation (NHDOT) and the Maine Department of Transportation (Maine DOT) shall participate in the consultation with the NHSHP and MESHPO respectively to find ways to mitigate the effects to the above six properties through their respective standard consultation processes; and

WHEREAS, the NHDOT and Maine DOT on behalf of the NHFHWA and MEFHWA respectively will execute these efforts to mitigate the adverse effects of the project; and

WHEREAS, the NHDOT and Maine DOT have solicited public comment through the public involvement process and the consulting party procedures with NHFHWA and MEFHWA as stated in 36 CFR 800 (2); and

WHEREAS, the FHWA has consulted with the Aroostook Band of MicMacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation and will apprise them of any findings; and

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WHEREAS, the NHDOT and Maine DOT have consulted with the following Consulting Parties to the Section 106 Process: the National Trust for Historic Preservation, Port of Portsmouth Maritime Museum and Albacore Park, Historic Bridge Foundation, and the Portsmouth Historical Society in the development of this agreement; and

WHEREAS, the NHFHWA and MEFHWA have agreed that the NHDOT and Maine DOT shall participate in consultation with the NHSHP and the MESHPO to find ways to mitigate its effects on impacted archaeological sites found eligible for the National Register of Historic Places under its standard phased investigations; and

WHEREAS, to the best of our knowledge and belief, no human remains and/or associated or unassociated funerary objects or sacred objects of cultural patrimony as defined in the Native American Graves Protection Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), NHFHWA has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii).

NOW, THEREFORE, NHFHWA with the assistance of MEFHWA, NHDOT, and Maine DOT shall ensure that the following terms and conditions will be implemented by the NHDOT and Maine DOT under this MOA in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 16 U.S.C. 470.

### **Stipulations**

NHFHWA, with the assistance of MEFHWA, NHDOT, and Maine DOT will ensure that the following stipulations are carried out:

#### **Project Development**

1. The NHSHP, the MESHPO, FHWA and the Parties consulted during the Section 106 and National Environmental Policy Act (NEPA) processes as listed above will be provided the opportunity to review and comment on the bridge design during the design-build process *at the following milestones: 25-30% (30 day review), 60% (10 day review), and 90% design (10 day review)*. The bridge design for the replacement of the bridge will follow *the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings*, Standards 9 and 10, as determined by FHWA in consultation with NHSHP and MESHPO. This continued consultation will focus on the design's conformance with Standards 9 and 10.

2. NHDOT will ensure that the Memorial Bridge, including the three-span Memorial Bridge, the Scott Avenue Bridge (Portsmouth Approach Span), and the Kittery Approach Spans are marketed together for reuse in compliance with 23 USC Sec. 144 for relocation. Marketing will occur once within a New Hampshire and Maine state and local newspaper by June 1, 2011. Additionally, the NHDOT and Maine DOT will market the bridge on their websites between April 1 and June 1, 2011. Ownership transfer will require the use of preservation covenants or other instruments to ensure the long-term protection of the qualifying characteristics of the Memorial Bridge.
3. FHWA shall ensure that NHDOT provides a letter report on all activities carried out under this agreement to the MESHPO, NESHPO, and the consulting parties to the Section 106 process. Each party who contributes to the mitigation of the Memorial Bridge Replacement Project will prepare a section of this letter report relative to such involvement annually due one month prior to the due date of the letter report on April 1 of each year beginning in 2012 and terminating at the termination of this MOA.

### **Historical Resources**

4. NHDOT will provide NESHPO with funding in an amount not to exceed \$175,000 to prepare a National Register Historic District Nomination for the Portsmouth Downtown District.
5. The Maine DOT, in coordination with the MESHPO will develop a phased plan to identify National Register Eligible properties in the Town of Kittery. The survey plan will include geographically relevant areas of the town and a priority order to survey the areas. The Maine DOT will provide \$50,000 from the project for the completion of the survey that will be completed in accordance with the phased plan.
6. The NHDOT will fund and oversee the development of an interpretive panel as follows. A 36 CFR 61(Appendix A)-qualified architectural historian will prepare an interpretive panel explaining the history of the Memorial Bridge crossing, the Engineering significance of the bridge, and background of its design engineer, J.A.L. Waddell, the preeminent designer of lift bridges. The panel will be placed in Prescott Park or a location near the bridge identified by the Public Outreach Committee (see stipulation 10 below). The first location is contingent upon continuing consultation with and agreement by the Prescott Park Trustees, Trustees of Trust Funds. Any other location will be coordinated with the landowner. NHDOT will ensure that the interpretive panel is manufactured and erected with appropriate American with Disabilities Act access as part of this design-build project. The design and content of the panel will be subject to the

- approval of the NESHPO and MESHPO, who will be provided 45 calendar days for review; and will be subject to approval by the property owner on which the panel is placed. The panel will be erected as part of the design-build contract.
7. The preparation of the Historic Structures Report (HSR) for the Memorial Bridge, which included the distribution of thirty copies to state and local repositories and its placement on the NHDOT website, has been completed. The Historic American Engineering Record for the bridge is within this document and includes the detailed description, narrative history, discussion of engineering significance, archivally stable large format photographs, and archivally stable copies of the original design plans. NHDOT will also ensure that an annotation of the bibliography of the HSR is completed to provide the location and a brief description of the contents of primary sources. The bibliography will be placed on the NHDOT and NESHPO websites. The bibliographic annotation will be prepared by an architectural historian qualified under 36 CFR 61 (Appendix A) under the direction of the NHDOT and reviewed by NESHPO and MESHPO within 45 calendar days of submission. It will be completed by December 1, 2014.
  8. For the 2012 meeting schedules, the NHDOT will work towards setting up pre-defined educational forums for the maintenance and rehabilitation of historic bridges by the NHDOT at an appropriate venue, such as: Technology Transfer Center at UNH (Local Government Center), the American Council of Engineering Companies, Structural Engineers of New Hampshire, and the NHDOT Training. The NHDOT will ensure that this training is offered by qualified persons with demonstrated expertise in historic bridge maintenance and rehabilitation.

### **Archaeologically-Based Impacts**

9. All necessary archaeological investigations will be completed before or during construction as specified in the stipulations below. If preservation in place is found necessary, then NHEHWA and MEFHWA will consult with their respective SHPOs and identified Native American groups that may attach religious or cultural importance to the affected property to resolve the treatment of such archaeological deposits. Such Native American groups will be identified prior to the commencement of construction under the design-build contract. NHDOT will oversee the following efforts.
  - a. Portsmouth Approach Span (Scott Avenue and Memorial Park)

NHEHWA will ensure that NHDOT conducts all necessary phases of archaeological investigation based on archaeological protocols and research designs incorporated into the design-build contract. Although the replacement

of the Portsmouth abutment may broaden the scope of work, the protocols and scope of work for the Rehabilitation of the Memorial Bridge were adequately defined in the following documents: *Memorial Bridge Rehabilitation: Scope of work for Archaeological Monitoring During Construction (October 23, 2007)* and *Memorial Bridge Rehabilitation: Archaeological Monitoring Protocol (April 2006)* by Independent Archaeological Consulting. The archaeological monitoring and investigations will be conducted by a historical archaeologist qualified under 36 CFR 61 (Appendix A) with the ability to consult with an archaeologist qualified in Native American archaeological studies. The historical archaeologist will have five years' experience in historical archaeology in the New England region. The final report will be reviewed and finalized by December 1, 2016.

b. Maine Approach Span

Independent Archaeological Consulting assessed the archaeological sensitivity of the Kittery Approach for the ME-NH Connections Study in the *ME-NH Connections Study Summary Report on Phase 0 (ME) / Phase IA (NH) Archaeological Sensitivity Assessment* (Rev. August 27, 2009). This portion of the project area was assessed at moderate archaeological sensitivity. If accessible prior to construction, all necessary phases of archaeological investigation will be completed prior to construction. If portions of the sensitive area are not accessible prior to construction, then a monitoring protocol and research goals will be developed for this portion of the construction monitoring. An archaeologist qualified under 36 CFR 61 (Appendix A) will conduct the archaeological investigations with the ability to consult with an archaeologist qualified in historical archaeological studies. The archaeologist will have five years' experience in the archaeology of Native American cultures in the New England region. The final report will be reviewed and finalized by December 1, 2016.

c. Data Recovery Process

The NHDOT and NHSHPPO agree that recovery of significant information from affected significant archaeological sites will be done in accordance with published guidance. In accordance with 36 CFR 800, the NHFHWA and MEFHWA acknowledge and accept the advice and conditions outlined in the Advisory Council on Historic Preservation's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," and other mitigation procedures published in the Federal Register on May 18, 1999. Additionally, all consulting parties agree that Native American tribes that may attach religious or cultural importance to the affected property

will be consulted in the development of a mitigation approach to each significant Native American site as noted above in this stipulation.

d. Discovery of Burials

If human remains and/or grave-associated artifacts are discovered while carrying out the activities pursuant to this MOA, the NHFHWA, MEFHWA, NHDOT, and Maine DOT will immediately notify the appropriate authorities, as prescribed by New Hampshire and Maine statutes to determine an appropriate course of action in accordance with the Advisory Council on Historic Preservation's (Council's) Revised "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects," adopted by the Council on February 23, 2007 at its quarterly business meeting in Washington, D.C.

**Economic-Based Impacts**

10. NHDOT/Maine DOT and FHWA will provide funding through the project to hire and supervise a Public Outreach Coordinator, that is 36 CFR 61 (Appendix A) qualified, for two years or for the duration of construction whichever is greater. This individual will, in part, act as the project's conduit for communication and interface with the public. To this end, NHDOT/ Maine DOT and FHWA will seek first to augment an existing part-time position at an existing entity, such as the Portsmouth or Kittery city/town offices and attempt to use existing office facilities. If no appropriate position(s) exist, NHDOT/ Maine DOT, and FHWA will create a new fulltime, temporary position for this purpose. This individual will be qualified under 36 CFR 61 (Appendix A) as a historian or architectural historian or closely related field with demonstrated five years' experience in conducting public programming, public coordination, and promotion of businesses and organizations within a historical setting. This position will have the following functions:

- a. Coordinate with an advisory committee, known as the Public Outreach Committee, established for this purpose. The Public Outreach Coordinator will invite the business community in Portsmouth and Kittery (i.e., Seacoast Chamber of Commerce); city and town representatives; historical societies and historic district commissions; museums; historic house museums; the arts community; and trustees of public parks and lands within the two communities to participate in the Public Outreach Committee.
- b. Market and promote the business districts in Portsmouth and Kittery during construction.
- c. Monitor visitorship at local museums / National Historic Landmarks (for example Strawberry Banke and the MacPhaedris-Warner House respectively).

- d. Assist the Design-Build Contractor and other city and state entities involved in access issues with continued vehicle access to the downtowns by designation of the placement and wording of directional signs; mapping; internet communication; coordination with the design/build contractor to establish sufficient parking; and any other transportation issues.
- e. Assist in access to planned events in the City of Portsmouth and the Town of Kittery.
- f. Coordinate planned cultural events within the two communities to promote the downtowns.
- g. Arrange public educational outreach programs concerning the history of the two communities, the significance of the Memorial Bridge, and other effective types of outreach education determined through the Public Outreach Committee. The program(s) identified by the committee will generate a lasting physical product, such as a book or film, which would be available to the communities and be within the budget established for this effort.

One suggested approach to fulfilling the above objectives would be to use the National Trust for Historic Preservation's Main Street Program model. The Trust provides guidance for this type of position. Guidance for this will be sought through Kathy LaPlante of the National Trust's Washington Office or her designated representative

### **Construction-Based Impacts**

11. The existing plaques on the Memorial Bridge and in Memorial Park will be conserved and re-installed on the proposed replacement bridge and in an appropriate area adjacent to the bridge entrance. This installation will be completed by the Design-Build Contractor under the direction of NHDOT in close consultation with the conservator described below. The conservation of the plaques will follow the original proposal completed for the former Rehabilitation of the Memorial Bridge Project, but there would need to be some design modifications of the plaques to fit them onto the replacement bridge. The scope of this work will be incorporated in the Design-Build contract. The Design-Build Contractor will contract with an established and qualified metal conservator. The conservator will hold a Masters of Arts Degree in Art History or related field with a certificate or similar designation in Conservation and at least ten years of experience in the field of conservation that includes at least three major successful projects involving metal conservation. The NH Division of Historical Resources will approve a list of at least three metal conservators. The conservator will be hired within a timeframe sufficient to re-examine the plaques, verify the method of safe removal, and conserve the plaques for their installation on the replacement bridge during the design-build contract.

12. Modern dedication signs will be prepared and installed at each portal of the proposed bridge. They will place the bridge and other plaques into their historical contexts. The wording of the signs will be prepared by a 36 CFR 61 (Appendix A) architectural historian and reviewed by the NESHPO and MESHPO within 45 days of submission. The signs will be fabricated within sufficient time for their placement by the Design-Build contractor under the direction of NHDOT.
  
13. Vibration levels will be monitored during construction. The Design-Build Contractor will hire a qualified individual whose qualifications are specified below to conduct a preconstruction survey. This survey will establish the area of vibration impact, provide details about the fragility of building materials, and specify the environmental conditions in the area of impact that would affect transmission of vibrations. This preconstruction survey will establish the baseline conditions for monitoring during construction, the construction activities that require monitoring, the general timeframes for monitoring, and the thresholds of vibration levels that will be maintained during construction. These elements will be placed in a Vibration Monitoring Plan. The NESHPO and MESHPO will be provided fourteen days in which to comment on the Vibration Monitoring Plan prior to its finalization prior to the beginning of construction. The NESHPO and MESHPO will also be afforded five days to review any modifications to the Vibration Monitoring Plan made during construction. While it is noted that the national standard for vibration threshold is established at 0.2 inches per second, the vibration limit for this project will be based on the findings of the preconstruction survey. Vibration will remain within safe levels for the historic buildings and structures within the Portsmouth Historic District that lie adjacent to the project area, including the National Historic Landmarks such as the MacPhaedris-Warner House, and Kittery properties in the vicinity of the construction. If vibrations are found to exceed the thresholds established for this project, the work causing that vibration will cease and corrective action will be taken to return the vibration level to acceptable thresholds. The vibration monitoring for these particular structures will be incorporated into the design-build "Request for Proposals" for the requirements of the contract. If damage should occur to buildings within the area of vibration impact, then the contractor will be responsible for repairing the damage in accordance with *the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings*.

When developing the vibration thresholds and preparing the Vibration Monitoring Plan, the Design-Build Contractor will contract with an individual trained in Historic Architecture or closely related field. The individual will have five years of professional experience as a Building Conservation Specialist and will have successfully completed three building conservation projects where he/she has taken into account the effects of different levels of vibration on historic masonry



and frame buildings. The standards cited herein are the *Secretary of the Interior's Historic Preservation Professional Qualification Standards 62, Fed. Reg. 33, 707 (June 20, 1997/Historic Architecture [http://www.cr.nps.gov/local-law/gis/html/quals.html])*. The NESHPO will provide the names and contact information of at least three individuals who would be qualified to perform such services.

### **Discovery of Unidentified Properties**

14. The NHDOT and Maine DOT will ensure that if additional previously unidentified architectural and / or archaeological properties are discovered, which may be affected by the undertaking or known properties are affected in an unanticipated manner, it will notify FHWA and the NESHPO and MESHPO. FHWA and the NESHPO and MESHPO will apply the criteria of eligibility and consult pursuant to 36 CFR 800.13.

NHFHWA and MEFHWA shall also ensure that the following terms and conditions are implemented:

#### 1. Dispute Resolution

Should the any party to this agreement or a consulting party to the Section 106 process for this project object within 30 days to any actions proposed or findings submitted for review, NHFHWA and MEFHWA shall consult with the objecting party(ies) to resolve the objection. If NHFHWA and MEFHWA determine that any objection(s) remains unresolved, NHFHWA and MEFHWA shall:

- a. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2). On receipt of adequate documentation, the ACHP shall review and advise NHFHWA and MEFHWA on the resolution of the objection within 30 days. Any comment provided by the ACHP, and all comments from the parties to the agreement will be taken into account by FHWA in reaching a final decision regarding the dispute.
- b. If the ACHP does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, NHFHWA and MEFHWA may render a decision regarding the dispute. In reaching its decision, NHFHWA and MEFHWA will take into account all comments regarding the dispute from the parties to this agreement.
- c. NHFHWA's and MEFHWA's responsibility to carry out all other actions subject to the terms of this agreement that are not subject of the dispute remain unchanged. NHFHWA and MEFHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to the dispute under this stipulation. NHFHWA's and MEFHWA's decision will be final.

## 2. Termination of Agreement

If any signatory determines that the terms of the MOA cannot be executed, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate the agreement. If the terms of this agreement have not been implemented by December 1, 2016, this agreement shall be considered null and void. In such event, the agency shall notify the parties to this agreement, and if it chooses to continue with the undertaking, shall reinstate review of the undertaking in accordance with 36 CFR 800.


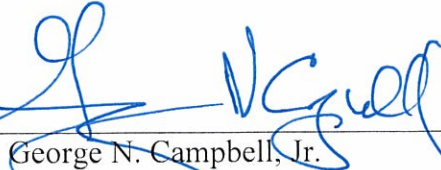
## 3. Amendment

Any party to this agreement may propose to other parties that the agreement be amended, whereupon the agency will consult with the other parties to this agreement to consider the amendment. An amendment shall be executed when it has been signed by all of the signatories to this MOA.

Execution of this MOA by NHFHWA, NESHPO, NHDOT, MEFHWA, MESHPO, and the Maine DOT and its subsequent filing with the Council, and implementation of its terms are evidence that FHWA has afforded the Council an opportunity to comment on this project, and that FHWA has taken into account the effects of the undertaking on historic properties.

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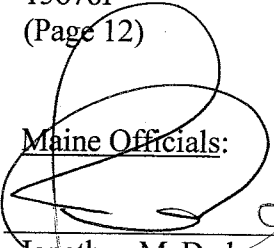
New Hampshire Officials:

	<u>3-15-11</u>		<u>3/15</u>
Patrick Bauer	Date	George N. Campbell, Jr.	Date
Acting Administrator		Commissioner	
Federal Highway Administration		NH Department of Transportation	
NH Division			

Wanda Ray Wilson, DSHPO, for 3/15/2011  
Elizabeth H. Muzzey Date  
State Historic Preservation Officer  
NH Division of Historical  
Resources

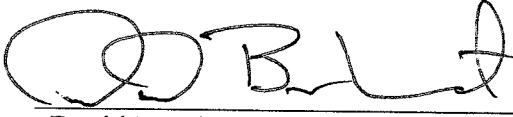
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Maine Officials:

  
Jonathan McDade  
Administrator  
Federal Highway Administration  
ME Division

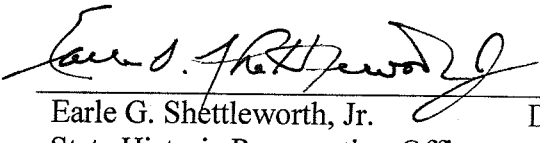
Date

3/15/11

  
David Bernhardt  
Commissioner  
ME Department of Transportation

Date

3/15/11

  
Earle G. Shettleworth, Jr.  
State Historic Preservation Officer  
ME Historic Preservation Commission

Date

3/15/11