

Newington-Dover
NHS-027-1(037)
11238

Memorandum of Agreement
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR PART 800.6(a)

WHEREAS, the Federal Highway Administration (FHWA) has determined that the widening of NH 16/US 4/Spaulding Turnpike including the Little Bay Bridges between Gosling Road and the Dover Toll in the Towns of Newington and Dover, New Hampshire, will have an adverse effect on the following properties that are eligible for the National Register of Historic Places:

Ira Pinkham House, 430 Dover Point Road, Dover, NH (DOV0093)
General Sullivan Bridge, spanning Little Bay, Dover and Newington, NH (DOV0158)
Beane Farm, 2299 Woodbury Ave., Newington, NH (NWN0204)
Isaac Dow House, 2204 Woodbury Ave., Newington, NH (NWN0205)
Portsmouth Water Booster Station, Arboretum Drive, Newington, NH (NWN0228)

and has consulted with the New Hampshire State Historic Preservation Officer (NHSHPO) pursuant to regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the New Hampshire Department of Transportation (NHDOT) participated in the consultation, has solicited public comment through the public hearing process and the consulting party procedures with FHWA as stated in 36 CFR 800 (2), and is invited to concur in this Memorandum of Agreement (MOA); and

WHEREAS, the FHWA has agreed that the NHDOT shall participate in consultation with the NHSHPO 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, in accordance with 36 CFR 800, the FHWA acknowledges and accepts 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; and

WHEREAS, under the MOA, NHDOT and NHSHPO agree that recovery of significant information from affected significant archaeological sites may be done in accordance with published guidance; and

WHEREAS, 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; and

WHEREAS, to the best of our knowledge and belief, no human remains 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;

NOW, THEREFORE, FHWA and the NHSHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

I. Minimization of Impact Through Highway Design and Landscaping

NHDOT will select an alternative that minimizes impacts through design by reducing right-of-way takings and through landscaping for the Beane Farm, Dow House, and Portsmouth Water Booster Station.

- A. Beane Farm: Impacts including minor filling, loss of mature trees, loss of view of the existing hillcrest, and loss of hilltop setting will be minimized by planting new silver maples and lilacs on the property in consultation with the property owner and their placement in relation to the power line that avoids the need for future trimming.
- B. Isaac Dow House: Impacts including removal of the stone retaining wall, minor slope impacts, and loss of shrubs will be minimized by replacement of the granite slab wall in-kind and appropriate landscaping with shrubs in consultation with the property owner.
- C. Portsmouth Water Booster Station: The impacts including acquisition of a portion of the property will be minimized by reducing the amount of the taking as much as possible and by leaving a tree buffer between the Turnpike and the historic building. The building is additionally documented by the completion of a New Hampshire Determination of Eligibility or Individual Property form.

II. Documentation, Acquisition, and marketing of Historic Properties

The NHDOT will acquire either: A. the barn (K-9 Kaos) on the Ira Pinkham House property (.17 acres) or B. the Ira Pinkham House and the associated barn (.8 acres).

- A. If the NHDOT acquires the barn with the associated .17 acres, then the barn's structure and associated original sections will undergo limited, state-level Historic American Building Survey (HABS) documentation. If it is feasible to relocate the barn, then the building will be marketed for relocation with protective covenants (see attachment A) as indicated below.
- B. If the NHDOT acquires both the Ira Pinkham House and the barn (.8 acres), then the house and the barn's structure and associated original sections will undergo state-level HABS documentation. The level of documentation for the barn will depend on the amount of the original structure that remains. If the owner of the Ira Pinkham property elects, the house will be reconveyed to the owner on its current site with protective covenants. Otherwise, the house will be marketed on site with protective covenants as indicated below. If it is feasible to relocate the barn, then the building will be marketed for relocation with protective covenants as indicated below.

For both these acquisition alternatives, documentation and marketing will proceed as follows:

- A. Documentation: If the Ira Pinkham House undergoes recordation, then the state-level HABS document will contain floor plans sufficient to detail the pre-1957 sections, large format photographs sufficient to document these sections, and a written narrative including detailed description and historical sections recording the properties ownership, historical development, and any significant associated contexts. The level of documentation for the barn will depend on the amount of original materials remaining. It is anticipated that its documentation will include plans, large format photographs, a narrative description, and narrative history of its originally constructed sections and sections that give the barn significance for its use as an agricultural structure, presumably at least the buildings framing. If the .8-acre property is purchased, the house and barn will be recorded within a single document. NHDOT shall ensure that all documentation is completed and accepted by NESHPO and FHWA prior to any disturbance of the property and that copies of this documentation are made available to NESHPO and FHWA and appropriate local archives designated by the NESHPO.

B. Marketing

1. Ira Pinkham Barn
 - a. If it is feasible to relocate the barn and it retains sufficient integrity to represent its agricultural function, FHWA shall make funds up to the costs of demolishing the structure available for relocation. If said owner does not elect the re-conveyance alternative, the structure will be marketed to the public for relocation with preservation and/or maintenance covenants as agreed to by NHSHPO and FHWA. NHDOT, in consultation with NHSHPO and FHWA, will develop a notice to include, at a minimum, the following:
 1. description of the building;
 2. notice that the building is eligible for the National Register for its architectural significance;
 3. notice that NHDOT will transfer the structure with consideration for the offer that best protects the building's historical values;
 4. note that FHWA will make funds up to the cost of demolishing the structure available for moving the structure; and
 5. notice of the requirement that the building will be transferred subject to covenants regarding its preservation and maintenance in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
 - b. The contents of the advertisements, the publications in which they appear, and the frequency of publication must be approved by NHSHPO and FHWA. The advertising period will last a minimum of 60 days.
 - c. If marketing has not been successful after a period of 30 days from the first day of advertisement, the NHSHPO and FHWA may approve the conveyance of the house without the preservation and maintenance covenants. On such approval, notice of the restrictive covenants may be removed from the advertisements. If efforts to market the barn are unsuccessful, the building will be demolished.
2. Ira Pinkham House
 - a. If the current owner of the Ira Pinkham House does not elect a reconveyance alternative, NHDOT will offer the house for sale to the public with preservation and/or maintenance covenants as agreed to by NHSHPO and FHWA. NHDOT, in consultation with NHSHPO and FHWA, will develop a notice to include, at a minimum, the following:
 1. description of the building;
 2. notice that the building is eligible for the National Register for its architectural significance;
 3. notice that NHDOT will transfer the structure with consideration for the offer that best protects the building's historical values;
 4. notice of the requirement that the building will be transferred subject to covenants regarding its preservation and maintenance in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.
 - b. The contents of the advertisements, the publications in which they appear, and the frequency of publication must be approved by NHSHPO and FHWA. The advertising period will last a minimum of 60 days.

- c. If marketing has not been successful after a period of 30 days from the first day of advertisement, the NHSHPO and FHWA may approve the conveyance of the house without the preservation and maintenance covenants. On such approval, notice of the restrictive covenants may be removed from the advertisements. If efforts to market the house are unsuccessful, the building will be demolished.

III. Minimization of the Adverse Effects to the General Sullivan Bridge

The adverse effects to the General Sullivan Bridge are significantly minimized. The project will require the removal of the roadway and north embankment approach to the bridge and reconfiguration of the north abutment and wing wall to accommodate the widening of a connector road under the Little Bay Bridges. Rather than remove the bridge, the NHDOT has agreed to rehabilitate the bridge for utilization by pedestrians and bicycles and for its continued use for fishing. SHPO has agreed that the removal and replacement of the floor system and any necessary replacement of rivets with bolts are not considered to be adverse effects. Large format photographs of the bridge with a map key and photograph descriptions to accompany the previously completed, detailed individual property inventory form will mitigate this limited impact. Overall, the impact of the project on the bridge will be beneficial.

IV. Protection of Historic Properties

The NHDOT shall ensure that upon acquisition of any historic properties, they are immediately secured and protected against damage, unauthorized occupancy, and vandalism until the measures stated in this agreement are implemented.

V. Archaeological Investigations

- A. All appropriate phases of archaeological investigations will be undertaken in archaeologically sensitive areas within the project area. If a site determined eligible for the National Register of Historic Places is identified within the area of impact, archaeological documentation guided by a data recovery plan for the affected portion of the site will be completed and accepted by the NHSHPO and FHWA. It is recognized that a small number of archaeological sites that possess very high significance may require preservation-in-place if feasible.
- B. Additional mitigation for the impacts on archaeological sites, specifically public education, will be determined through an agreement between FHWA, NHSHPO, and NHDOT.
- C. If human remains and grave-associated artifacts are discovered while carrying out the activities pursuant to this MOA, the FHWA and NHDOT will immediately notify the appropriate authorities, as prescribed by New Hampshire statutes, and the NHSHPO, to determine an appropriate course of action in accordance with RSA 277-C:8a-8j and 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.

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

I. Dispute Resolution

Should the NHSHPO object within 30 days to any plans or specifications provided for review or action proposed pursuant to this agreement, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any Council comment provided

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in response to such a request will be taken into account by FHWA in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute; FHWA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

II. Termination of Agreement

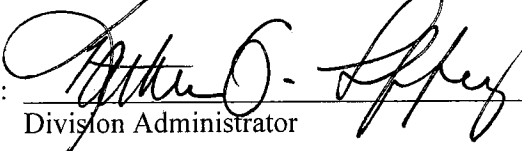
If any signatory determines that the terms of the MOA cannot be executed, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate the agreement. If the terms of this agreement have not been implemented by December 1, 2018, this agreement 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 undertakings, shall reinitiate review of the undertaking in accordance with 36 CFR 800.

III. Amendment


Any party to this agreement may propose to the agency that the agreement be amended, whereupon the agency will consult with the other parties to this agreement to consider the amendment. 36 CFR 800.6 (c)(1) shall govern the execution of this amendment.

Execution of this MOA by FHWA and NHSHPO, its subsequent acceptance by 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.

NH FEDERAL HIGHWAY ADMINISTRATION

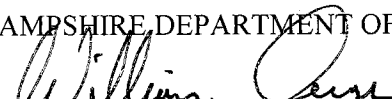
By:  Date: 4/3/08
Division Administrator

NEW HAMPSHIRE DIVISION OF HISTORIC RESOURCES

By:  Date: 4/3/08
NH State Historic Preservation Officer

Concurrence:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By:  Date: 4/4/08
Director of Project Development