

APPENDIX G
MEMORANDUM OF AGREEMENT

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Between The Federal Highway Administration and
The Connecticut State Historic Preservation Office

Regarding the Extension of Route 11 in the
Towns of East Lyme, Montville, Salem, and Waterford, Connecticut

F.A.P. No. IXAF-MGS-0081(106)
State Project No. 120-81

SUBMITTED PURSUANT TO 36 CFR 800.6(a)

WHEREAS, the Federal Highway Administration (**FHWA**) proposes to assist in funding the extension of Route 11 in the towns of East Lyme, Montville, Salem, and Waterford, Connecticut, hereinafter referred to as the **undertaking**; and

WHEREAS, the FHWA and the Connecticut Department of Transportation (**ConnDOT**) have determined that the proposed project will have *an adverse effect* upon historic properties included in, or eligible for inclusion in, the National Register of Historic Places; and

WHEREAS, the FHWA has consulted with the Connecticut State Historic Preservation Office (**SHPO**) pursuant to the 36 CFR Part 800 regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the FHWA has consulted with representatives of the Mashantucket Pequot Tribe and The Mohegan Indian Tribe regarding the adverse effects of the proposed undertaking, and has afforded the Tribes an opportunity to comment in accordance with 36 CFR 800.2(c)(2)(ii); and

WHEREAS, ConnDOT has participated in the consultation, and has been invited to concur in this Memorandum of Agreement (MOA).

NOW, THEREFORE, the FHWA and the SHPO agree that the proposed undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of this undertaking on historic properties, including sites of potential archaeological significance.

STIPULATIONS:

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

1. FHWA and/or ConnDOT shall provide the SHPO with an opportunity to review and comment upon all project-related improvements proposed in the vicinity of 21 Gurley Road in East Lyme.
2. Prior to any ground disturbance or vehicle compaction within a fifty (50) foot radius of the Taber Cemetery, FHWA and/or ConnDOT shall conduct a pre-construction remote sensing survey followed by consultation with the SHPO to determine the appropriate protection for the cemetery (including any unmarked graves located in immediate proximity to, but outside the boundaries of the marked cemetery features). FHWA and/or ConnDOT shall ensure that a construction-free buffer, as determined during the aforementioned consultation with the SHPO, is maintained around the Taber Cemetery, located along the south side of U.S. Route 1 in East Lyme. Protective temporary fencing shall be erected and maintained, as directed by ConnDOT, to ensure avoidance of the cemetery throughout the duration of the construction of this project.
3. FHWA and/or ConnDOT shall develop, in consultation with the SHPO, pertinent data recovery plans for archaeological sites #45-25, 45-28, 45-29, 45-37, 45-39, 45-42, 45-43, 45-48, 45-49, 86-24, 121-8, 121-10, 121-22, 152-108, 152-129 and 152-134. Data recovery plans, including the conservation and disposition of artifacts, curation of soil samples, photographs, field notes and preparation of final reports shall be implemented by archaeological personnel who meet National Park Service qualification standards. All archaeological investigations shall be carried out in accordance with the SHPO's Environmental Review Primer for Connecticut's Archaeological Resources.
4. FHWA and/or ConnDOT shall implement appropriate reconnaissance, intensive, and, if warranted, data recovery studies for all previously inaccessible areas located within the proposed right-of-way for Route 11, as well as all state-owned properties used for temporary storage and work locations, wetland mitigation areas, and borrow pits. All archaeological investigations shall be carried out in accordance with the SHPO's Environmental Review Primer for Connecticut's Archaeological Resources.
5. FHWA and/or ConnDOT shall acquire and preserve, to the maximum extent feasible, historically-associated and archaeologically-sensitive lands with respect to historic archaeological sites #152-132, 152-24, 152-25, 152-26, 152-28, 45-46, 152-29, 152-73, 152-33, 152-34, 152-30, 152-31 and 45-45. Collectively, these archaeological sites substantively constitute the residential core of the Wolf Pit Hills archaeological district. Maximum extent feasible shall be construed to mean not to exceed 200 acres. Any additional property that

may be acquired within or adjacent to the residential core of the Wolf Pit Hills archaeological district to comply with, and subject to the terms of, a required Section 404 permit to be issued by the U.S. Army Corps of Engineers for this project may also be added to this proposed Wolf Pit Hills State Archaeological Preserve in accordance with the other terms of this Stipulation.

FHWA and/or ConnDOT shall prepare the appropriate materials for the designation of all property acquired in accordance with this Stipulation as a State Archaeological Preserve (SAP) pursuant to Section 10-384 of the Connecticut General Statutes, as amended. FHWA and/or ConnDOT shall also sponsor the nomination and designation of one archaeological resource in each of the towns of Salem, Montville, East Lyme and Waterford, as State Archaeological Preserves; however, this latter requirement shall be considered satisfied with respect to either or both of the towns of East Lyme and Waterford for archaeological resources acquired within these respective towns for the above proposed Wolf Pit Hills State Archaeological Preserve.

Documentation of the above proposed State Archaeological Preserves shall consist of an individual public education booklet for each Preserve consistent in overall content and design to the professional standards of the SHPO. FHWA and/or ConnDOT shall provide five hundred (500) print copies, and an electronic (digital media) version, to the SHPO for statewide public distribution of each booklet, with the exception that one thousand (1000) print copies shall be provided for the proposed Wolf Pit Hills State Archaeological Preserve.

Ownership, custody and/or control of all property acquired by FHWA and/or ConnDOT in accordance with this MOA may be transferred to one or more land conservation and/or preservation organizations mutually acceptable to FHWA, ConnDOT and SHPO.

6. FHWA and/or ConnDOT shall develop a public-oriented educational component with respect to the archaeological data recovery program for sites #45-25, 45-28, 45-29, 45-37, 45-39, 45-42, 45-43, 45-48, 45-49, 86-24, 121-8, 121-10, 121-22, 152-108, 152-129 and 152-134. This shall consist of public-oriented reports, slide presentations, interpretive exhibits and/or electronic reports concerning the prehistoric, historic and industrial archaeology of Salem, Montville, East Lyme and Waterford. Summary reports shall be prepared and submitted to the Archaeological Society of Connecticut Bulletin and the Society of Industrial Archaeology New England Chapter Newsletter.
7. FHWA and/or ConnDOT shall reposit all artifacts, photographs, and field notes generated by project-related archaeological investigations with the Office of the State Archaeologist (OSA) at the University of Connecticut (Storrs campus) pursuant to Section 10-383 of the Connecticut General Statutes, as amended.

8. **Dispute Resolution:**

Should the FHWA, ConnDOT and the SHPO fail to agree on the terms of this MOA, the FHWA shall request that the Advisory Council on Historic Preservation (**Council**) participate in the consultation, and shall provide the Council with the documentation set forth in 36 CFR 800.11(g).

If the Council chooses not to participate in the consultation, the Council will notify the FHWA and proceed to comment in accordance with 36 CFR 800.7(c).

If the Council does choose to participate in the consultation, the FHWA shall consult with the SHPO, the Council and other consulting parties to seek ways to avoid, minimize, or mitigate the adverse effects.

9. **Amendment:**

If any signatory to this MOA believes that this MOA should be amended, that signatory may propose amendments to the other signatories, whereupon all signatories shall consult to consider the amendments pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8).

10. **Termination:**

If the FHWA determines that it cannot implement the terms of this MOA, or if the SHPO determines that this MOA is not being properly implemented, either of these signatories may propose that this MOA be terminated. The signatory proposing termination shall notify the other parties to this MOA explaining the reasons for termination and affording the other parties at least thirty (30) days notice to consult and seek alternatives to termination. At that time, the parties shall consult. Should such consultation fail, either the FHWA or the SHPO may terminate this MOA by so notifying the other parties.

In the event of termination, the FHWA shall either consult in accordance with 36 CFR 800.6 to develop and execute a new MOA, or request the Council to comment pursuant to 36 CFR 800.7.

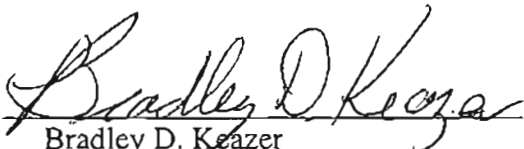
11. **Duration of this MOA:**

Unless terminated pursuant to the above Termination stipulation, this MOA will continue in full force and effect until the FHWA, in consultation with the other signatories, determines that all of its terms have been satisfactorily fulfilled. Upon a determination by the FHWA that all of the terms of this MOA have been satisfactorily fulfilled, this MOA will then terminate and have no further force or effect. The FHWA shall promptly provide the other signatories with written notice of its determination and termination of this MOA.

12. Execution of this MOA by the FHWA and the SHPO, with concurrence by ConnDOT, and implementation of its terms, evidences that:

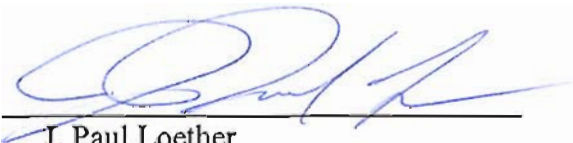
- FHWA and has afforded the Council an opportunity to comment on the proposed undertaking and its effects on historic properties, including sites of potential archaeological significance; and
- FHWA has taken into account the effects of this undertaking on historic properties, including sites of potential archaeological significance.

FEDERAL HIGHWAY ADMINISTRATION

By: 
Bradley D. Keazer
Division Administrator

Date: 12/8/06

**CONNECTICUT COMMISSION ON CULTURE and TOURISM
CONNECTICUT STATE HISTORIC PRESERVATION OFFICE**

By: 
J. Paul Loether
Division Director and
Deputy State Historic Preservation Officer

Date: 11/28/06

Concur:

**STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION**

By: 
Edgar T. Hurler
Transportation Planning Director
Bureau of Policy and Planning

Date: 11/22/2006