



U.S. Department
of Transportation
**Federal Highway
Administration**

Office of the Administrator

January 19, 2017

1200 New Jersey Ave., SE
Washington, D.C. 20590

In Reply Refer To:
HEPE

The Honorable Milford Wayne Donaldson
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW., Suite 809
Washington, DC 20004

Dear Chairman Donaldson:

The Federal Highway Administration (FHWA) is terminating consultation for the Providence Viaduct Bridge Project in Rhode Island and asking the Advisory Council for Historic Preservation (ACHP) to comment pursuant to 36 CFR 800.7. The FHWA is also notifying all consulting parties of the agency's intent, including the Rhode Island Historic Preservation Office (RIHPHC), the Narragansett Indian Tribe (Tribe), and the Rhode Island Department of Transportation (RIDOT). The FHWA looks forward to receiving the ACHP's comments.

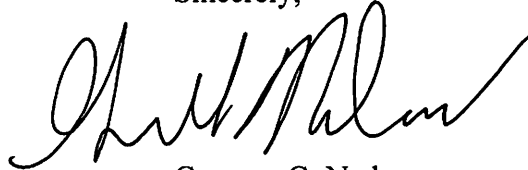
On October 3, 2011, the FHWA, RIDOT, RIHPHC, and the Tribe entered into a Section 106 Programmatic Agreement (PA) stipulating mitigation for the I-95 Providence Viaduct reconstruction project. The PA provided for the purchase of property with archaeological and cultural significance in order to replace Tribal archeological information lost with the reconstruction of I-95. The property was to be purchased and transferred to the Tribe with "appropriate covenants that preserve the property and its cultural resources in perpetuity." In September 2013, RIDOT purchased the properties and prepared deeds to transfer the properties to the Tribe. The deeds, however, included requirements that were not agreed to in the original PA. The deeds now require the Tribe to "waive tribal sovereign immunity as it applied to the deed covenants" and specify that the "property shall be subject to civil and criminal laws and jurisdiction of the State of Rhode Island."

Since the fall of 2013, RIDOT has been unable to complete the transfer of these properties to the Tribe and therefore has not been able to fulfill the commitments established in the PA. The project, which has obligated \$200 million in Federal-aid, has two components, a northbound and a southbound section. The FHWA gave a notice to proceed for the southbound section of the project in January 2013, and construction is approximately 90 percent complete. The northbound section of the project is under design, with RIDOT anticipating advertisement in 2017 and construction commencing in 2018. The FHWA has placed the northbound section of the project on hold pending completion of the Section 106 mitigation requirement in the PA to transfer the properties acquired by RIDOT to the Tribe.

As FHWA has previously explained to RIDOT, while the land transfer can include covenants that limit the use of the property to ensure any potential archaeological features are maintained in perpetuity, it cannot include a requirement for the Tribe to waive its sovereign immunity rights. The FHWA has been engaged in negotiations with the parties but has not been able to resolve the impasse. One of the Tribe's principal concerns is that waiving its sovereign immunity would infringe its access to Federal court jurisdiction on tribal matters.

We appreciate your attention to this matter and are available to the Council if additional information is needed. We look forward to hearing from you.

Sincerely,



Gregory G. Nadeau
Administrator

cc:
Peter Alviti, Jr., P.E.
Director
Rhode Island Department of Transportation

Mr. Carlos C. Machado
Division Administrator
Federal Highway Administrator

Mr. Edward F. Sanderson
Executive Director & State Historic Preservation Officer
Rhode Island Historical Preservation and Heritage Commission

Matthew Thomas
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