FRIENDS OF THE MITCHELL RIVER WOODEN DRAWBRIDGE
C/O 14 SUNSET LANE
CHATHAM, MA 02633

May 8, 2012

Your Reference: Chatham - Mitchell River Bridge Replacement Project
Section 106 –– Final Memorandum of Agreement for Concurring Parties' Signatures

Ms. Pamela S. Stephenson
Division Administrator
Massachusetts Division
Federal Highway Administration
55 Broadway, 10th Floor
Cambridge, MA 02142

Dear Ms. Stephenson:

PRELIMINARY:

This will acknowledge receipt of your letter of April 23, 2012 and the enclosed copy of the Memorandum of Agreement (MOA) with respect to the above matter.

As set forth in your covering letter, you have advised us that the MOA has been signed by your office and the Massachusetts Historical Commission as signatories as defined under Section 106; that the Town of Chatham and the Massachusetts Department of Transportation have also signed as invited signatories; and that two other Section 106 Consulting Parties have also signed the document as Concurring Parties.

It is our understanding, however, that the following Consulting Parties have since advised you and Ms. Damaris Santiago of your office that they will not sign the MOA:

The National Trust for Historic Preservation
Historic Bridge Foundation
Indiana Historic SPANS Task Force
PreservationMassachusetts
Dr. James L. Cooper, Ph.D
Chatham Historical Commission

In addition, we advised you by letter of March 18, 2012, that the Friends of the Mitchell River Wooden Drawbridge ("Friends") would also not be signing the MOA, and by this email and letter we hereby reaffirm our earlier decision. The position of the Friends and of one or more of the above named preservation entities will be discussed further below. (For ease of reference, these organizations will be referred to in totality as the "preservation entities".)

DECISION OF THE FRIENDS NOT TO SIGN THE MOA:

Our five-page letter of March 18th, a copy of which is deemed to be incorporated herein, sets forth both a summary and the specific reasons why the Friends will not be signing the Memorandum of Agreement. Rather

than repeating these in their entirety, we are briefly listing each of these reasons. We ask, therefore, that you refer to the March 18th letter for further specifics as to our position.

1. The Section 106 process, as you know, is intended under the National Historic Preservation Act to avoid, minimize and mitigate harm to a historic asset whose use is being threatened or altered by a federally financed or licensed project. Here, the Mitchell River Bridge, which is the last wooden drawbridge in the entire United States, will be reconstructed at an untrammeled site at which it has stood for over 150 years. As part of this project, it is absolutely imperative, under Sec. 106, that the Bridge's context sensitivity be preserved to the maximum extent possible. In addition, the provisions of Section 4f of the federal Transportation Act also require that the project include ''all possible planning to minimize harm'', and the statute and the regulations promulgated thereunder also require that the FHWA may approve only the alternative that ''causes the least overall harm in light of the statute's preservation purpose.'' In view of these requirements, we believe that the MOA is deficient in its failure to adhere to the overriding preservation purpose of both Section 106 and Section 4f.

2. The MOA continues to omit from the record all of the previous comments and recommendations of the Advisory Council on Historic Preservation, so that the reader of this document will never know that the Council (a principal party in these proceedings) strongly urged FHWA and MassDOT to incorporate more wood into the bridge design, either by way of accepting Alt. 1B favored by all of the preservation entities or by coming up with a ''hybrid'' design between Alt. 3 (favored by MassDOT) and Alt. 1B, so that the National Register eligibility of the Bridge (so important to the Friends and to the Council) can be retained. This omission is not inadvertent: it was pointed out by the Friends in earlier drafts of the MOA, but FHWA has ignored these suggestions. We believe that the framing of the MOA to improperly favor the position of MassDOT and to omit all questioning and opposing comments from the Advisory Council is not in accordance with either Section 106 or Section 4f of the Transportation Act.

3. The MOA has also omitted the comments and objections of the preservation entities who have favored Alt. 1B over Alt. 3 and who have sought to find a compromise between Alt. 3 and Alt. 1B. Once again, this omission is not inadvertent: none of the comments, written or verbal, of the preservation entities are included at all in either the MOA or the covering letter of FHWA. The specific request by the Chatham Historical Commission for wooden pier caps and their brief discussion with the MassDOT engineers indicating that this could be done, is not mentioned. The critical notation pointed out by the Friends from the very outset of these proceedings, that Alt. 1B is rated by MassDOT as "GOOD" for context sensitivity, whereas Alt. 3 is only rated as "FAIR", has thus been hidden in the recesses of thedd record and not disclosed. The FHWA letter disparages the use of greenheart wood for pilings by claiming that it is ''extremely similar to Ekki wood used in the Powder Point Bridge in Duxbury and which has deteriorated, and that MassDOT has relied upon its "past experience" (unspecified), "consultation with" (unnamed) ''suppliers'' and ''independent pier reviews'' (also unnamed). Your letter refers blithely to ''extensive research'' undertaken by MassDOT but no documents or supporting information is made a part of the record so that the preservation entities can neither review nor verify it. Nor is there any reference to the information provided by the Friends that a dock in Chatham very near the Bridge, constructed over fifty years ago using greenheart pilings, is still fully in use. Surely, if MassDOT was interested in independently reviewing this data, would it not have shared its own data with that produced by the Friends?

4. The MOA has incorrectly accepted the position of MassDOT that only a very small number of items are to be subject to further consultation under the Section 106 process, namely (i) the use of timber pier caps vs. concrete caps; (ii) the design of the stone cladding for the piers and abutments; (iii) the paint color of the steel pilings; and (iv) possible salvage of the existing timber railings. FHWA has further incorrectly accepted the unilateral position of MassDOT that it can completely refuse to consult further on the design of the bridge

other than the four items referred to above. As shown herein, the preservation entities continue to vigorously dispute the position of MassDOT with respect to the history and use of greenheart wooden pilings; the construction and design of an all timber bascule leaf; and the need for further study with respect to the timber pier caps.

5. Your covering letter states that FHWA is satisfied that MassDOT has incorporated as much timber into the design ''as is prudent''. This word (and its reference) is clearly taken from Section 4f which says that a federal agency is absolutely prohibited from funding a transportation project and ''using'' a historic site (such as the Mitchell River Bridge) ''unless there is no feasible and prudent alternative''. Under Sec. 4f, ''feasible" means ''sound engineering'', and the MassDOT project manager specifically noted twice at the January 2012 teleconference that Alt. 1B is ''feasible'', while also claiming that it is not ''prudent''. Under Sec. 4f, an alternative is not ''prudent'' only if there are ''truly unusual factors'' involved or the costs of such alternative are of an ''extraordinary magnitude''. Here, clearly the costs of Alt. 1B are not of an extraordinary magnitude nor are there truly unusual factors here: accordingly, Alt. 1B can not be rejected in favor of Alt. 3.

6. The very preliminary sketch offered by the Friends' engineering advisor, John Smolen, P.E., with respect to the use of additional timber in the bascule leaf, has been rejected out of hand by the MassDOT engineers, URS Corporation, without being willing to meet with Mr. Smolen or discuss this further by phone or otherwise. FHWA has, once again, incorrectly accepted the unilateral position of MassDOT that it can refuse to consult further on this issue. (See our further comments herein regarding the unwillingness of MassDOT and FHWA to fully and fairly enter into the consulting process required by Section 106.)

7. Section 106 requires that when seeking to remedy any adverse effect to a historic asset (i.e., the Bridge), the result that is to be favored is the one that is the more context sensitive. The MOA, however, uses an incorrect standard---- one that only ''adequately mitigate(s)'' the removal of the National Register eligible Bridge, while ''balancing sound engineering, fiscal responsibility, and context sensitivity''. Under Sec. 106, this does not accord the proper primary respect due to the preservation of an historic asset, especially where the structure is the last remaining wooden drawbridge in the United States, and one that is of ''exceptional significance'' as found by the Keeper. While engineering and fiscal issues are important, they are not as important under Sec. 106 whose primary purpose is to protect our dwindling historic assets (along with public parks and open space).

8. Your letter further refers to the position taken by the Town of Chatham Board of Selectmen, but you fail to properly mention all of the issues which the Board asked to be addressed. These include ''further consultation [be had] with respect to retaining as much wood as possible in the reconstructed bridge''. The position of the Board to include additional wood---- either by way of Alt. 1B or a ''hybrid'' between 1B and Alt. 3--- has been completely ignored. Further, MassDOT continues to vacillate with respect to the use of wooden pier caps---- even though over three months have elapsed since the January 4th teleconference when this issue was discussed favorably as one way in which to add additional wood to the rebuilt bridge. Another way would be the possible use of wooden battens to aesthetically shield the metal pilings as has been done at the Nantucket public pier.

9. Paragraph IV of the MOA provides that FHWA and MassDOT shall "assist" the efforts of any Section 106 consulting party to pursue a formal National Register DOE for the new bridge "once the construction of the new Mitchell River Bridge is completed". Since the proposed design of the new bridge presently includes a steel bascule, concrete-filled steel pilings and concrete pier caps, there is little likelihood that the Keeper of the National Register will treat the completed structure as "the last wooden drawbridge in Massachusetts and the United States."The continued eligibility of the structure, which the Council and the Friends and other preservation entities have found to be so important, will disappear. Since there is nothing in the MOA to

provide that the reconstructed bridge will be torn down if it is determined not to be eligible, the provisions of Paragraph IV are effectively a sham, yet the MOA and the covering FHWA letter do not explain this nor indicate in any way the opposition of the Friends and others to this preposterous proposal.

10. The MOA and covering letter are devoid of any mention of the serious issues of speeding and safety both along Bridge Street and over the Bridge itself. These issues have been fully set forth in our previous letters but are apparently "not appropriate" for consideration in each of these documents. From the outset of this process, the townspeople and property owners along Bridge Street have spoken of their concerns regarding a bridge design which would exacerbate vehicular speeds and create unsafe conditions for motorists, pedestrians, cyclists, and those fishing at the bridge, including many young children. The townspeople have spoken time and time again that they do not want faster traffic, nor special speed bumps or flashing lights or other unnecessary traffic calming devices which would be totally incompatible with the bridge or this historic site. In addition, you now have a letter from the Town of Chatham Board of Selectmen setting forth their own direct and strong concerns regarding the need for a bridge design that will not encourage speeding.

11. Finally, in offering these comments, we must note that throughout the Sec. 106 process, we and the other preservation entities have continually raised our deep concerns and complaints regarding the failure of MassDOT and FHWA to fairly and fully comply with the basic consulting requirements of the regulations which are intended to allow the consulting parties to enter into meaningful dialogue and review of the project, including requests for documentation to provide support and confirmation as to matters of engineering, technical expertise, financial calculations, and other similar matters which are in question. Unless the federal and state agencies— who are generally in possession of much of the information regarding the design requirements for a bridge (or highway structure)---- are willing to reasonably cooperate with the consulting parties in their efforts to obtain this information, the entire process becomes thwarted. Unfortunately, this is what has happened in this matter. The Friends have repeatedly requested additional information from MassDOT and FHWA to support claims made by them, for instance, as to the longevity and estimated cost of wood vs. concrete and steel or as to the experience of wood vs. steel in the water, along with many other important aspects of the reconstruction of a timber bridge, only to have those requests completely rejected or more often, simply ignored. This is then followed by their own affirmation of the accuracy and validity of these same claims, even though the agencies are aware that the consulting parties have raised serious questions regarding them. When this occurs, as stated above, the process has broken down, and this is why the preservation entities— many of whom are national in scope---- have gone on record as stating their belief that both FHWA and MassDOT have breached their obligations under Section 106.

In closing, we thank you for the opportunity to comment on the proposed MOA, and we look forward to the continuation of the Section 106 process and the NEPA and Section 4f proceedings as they occur.

Sincerely,

Norman Pacun
For the Friends of the Mitchell River
Wooden Drawbridge

cc: Ms. Damaris Santiago

By E-Mail:
Carol Legard, ACHP
Charlene Vaughn, ACHP

Reid Nelson, ACHP
Elizabeth Merritt, National Trust for Historic Preservation
Kitty Henderson, Historic Bridge Foundation
Paul Brandenburg, Historic SPANS Task Force
Jim Igoe, PreservationMassachusetts
Dr. Jim Cooper
Don Aikman, Chatham Historical Commission
Bob Oliver, Chatham Historical Commission
Joseph Pavao, MassDOT
Brona Simon, Massachusetts Historical Commission
Jill Goldsmith, Chatham Town Manager
Florence Seldin, Chatham Board of Selectmen
Ted Keon, Chatham Coastal Resources
David Sire, Department of Interior