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Historic Preservation
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INDIANA HISTORIC
SPANS TASK FORCE

March 27, 2013

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

Re: Mitchell River Bridge Project, Chatham, MA

Dear Ms. Stephenson:

On behalf of the National Trust for Historic Preservation, the Historic Bridge Foundation, and the Indiana SPANS Task Force, we submit this letter in response to an e-mail from Damaris Santiago dated March 7, 2013 (on which you were copied), regarding the Federal Highway Administration's (FHWA's) improper use of the Programmatic Section 4(f) Evaluation for Historic Bridges for the Mitchell River Bridge Project in Chatham, Massachusetts.

As you know, Section 4(f) of the Department of Transportation Act differs significantly from the requirements of Section 106 of the National Historic Preservation Act by placing stringent affirmative obligations on the agency to determine that "[t]here is no feasible and prudent avoidance alternative ... to the use of land from the property," and to conduct "all possible planning ... to minimize harm to the property resulting from such use." 23 C.F.R. § 774.3(a). Even if no feasible and prudent avoidance alternative exists, the agency is obligated to approve "only the alternative that ... [c]auses **the least overall harm in light of the statute's preservation purpose.**" *Id.* § 774.3(c)(1) (emphasis added).

The Programmatic Section 4(f) Evaluation for Historic Bridges, adopted thirty years ago, provides a streamlined checklist for standard, routine bridge projects, based on the underlying principle that "[i]mpacts on the typical bridge rehabilitation or replacement project ... tend to be very similar from project to project irrespective of the surroundings or the particular type of structure involved" and because the "alternatives available in the upgrading or replacement of a deficient historic bridge are limited and predictable." 48 Fed. Reg. 38,135 (1983).¹ This is simply not the case with the Mitchell River Bridge Project.

Application of this Programmatic Section 4(f) Evaluation is improper for the Mitchell River Bridge Project because of the Keeper of the National Register's unique justification of the Bridge's eligibility for the National Register of Historic Places and its "exceptional significance [as] the last remaining single-leaf wooden drawbridge in Massachusetts (and perhaps in the entire United States)."

In the March 7 e-mail, Ms. Santiago states,

¹ As stated in the Section 4(f) regulations, "Programmatic Section 4(f) evaluations are a time-saving procedural alternative to preparing individual Section 4(f) evaluations . . . for certain *minor uses* of Section 4(f) property." 23 C.F.R. § 774.3(d) (emphasis added).

[I]t is [FHWA's] *interpretation* under Section 4(f) that Alternatives 3 and 1B will equally harm the historic bridge by replacing it in its entirety. The choice of one replacement alternative over another does not minimize harm. [Emphasis added.]

These statements are utterly disingenuous. The whole point of the Section 106 consultation process was to develop a more “context-sensitive” alternative that would increase the amount of wood in the replacement bridge. If the FHWA truly believed that Alternatives 1B and 3 would “equally harm” the historic bridge, why did the agency spend more than two years engaged in Section 106 consultation working to revise the design of the bridge in order to incorporate more wood? The 11th Whereas Clause of the MOA proudly touts the fact that,

as a result of [the Section 106] consultation process, MassDOT has significantly revised its initially proposed, 3-span, fully modern concrete-and-steel bridge design, and has developed instead a *more context-sensitive design that incorporates a substantial number of structural timber elements* (plus other, non-structural wooden features) into the superstructure of the proposed replacement bridge^[2] . . . [emphasis added].

The Sixth Whereas Clause emphasizes that “the Mitchell River Bridge is not located in any historic district that is either listed in or has been determined eligible for listing in the National Register.” Accordingly, the whole point of a “context-sensitive design” for purposes of Section 106 (and thus for Section 4(f) as well, since the Bridge is the only historic property used by the project) is not the “context” of a surrounding historic district, but the “context” of the existing historic bridge itself, and the effort to come closer to replicating that timber construction by incorporating as much wood as possible into the design of the new bridge.

The Keeper’s Determination of Eligibility notification, dated October 1, 2010, states that the “exceptional significance” of the Bridge is not derived solely from the existing structure itself, which is a combination of elements from 1980 and 1925, but to the “continuous line of wooden drawbridges that have spanned this river crossing for over 150 years.” Replacing the Bridge with a mostly non-wooden structure will, therefore, have a greater adverse impact on the historic resource than continuing the 150-year trend of replacing the Bridge with like-kind timber materials. Alternative 1B would have resulted in only a minor impact to the Bridge’s historic integrity, since the Bridge has been replaced and/or reconstructed in the past, and because reconstruction, in accordance with the Secretary’s Standards, would minimize the adverse impacts to the historic bridge. The current decision to replace the Bridge is essentially no different than earlier decisions except for the refusal by the transportation agencies to replace the Bridge with a timber drawbridge.

The Project’s Section 106 process further illustrates that this is not a routine or minor project, and that it merits further evaluation. The Advisory Council on Historic Preservation was involved throughout the Section 106 review, and the Keeper had to be consulted for guidance, both of which are unusual and support the need for their continued involvement.

² For example, Stipulation I specifically requires that “the principal structural members of the five approach spans shall be glue-laminated (glulam) timber beams. The decking, sidewalks, bridge railings, and at-curb barriers on all six spans shall be constructed of timber.”

The FHWA's invocation of the Programmatic Section 4(f) Evaluation in this case also has the effect of circumventing the explicit statutory requirement to "cooperate and consult with" the Secretary of the Interior under Section 4(f). 23 U.S.C. § 138(a); 49 U.S.C. § 303(b). The Section 4(f) regulations reiterate this requirement. 23 C.F.R. § 774.5(a) ("the Section 4(f) evaluation *shall be provided for coordination and comment . . .* to the Department of the Interior [DOI]") (emphasis added). That review is particularly important in connection with this Project because of the crucial role that DOI played in resolving the dispute over the significance of the Mitchell River Bridge, and issuing the conclusive determination that the Bridge is eligible for the National Register. The DOI's opportunity to comment and continue its involvement is foreclosed by the application of the Programmatic 4(f) Evaluation.

In sum, the use of the Programmatic 4(f) Evaluation for the Mitchell River Bridge Project is an attempt by FHWA to evade the strict application of the requirements to "minimize harm" and represents a failure to comply with the requirements of Section 4(f). For these reasons, we continue to believe that it is improper and unlawful for the FHWA to rely on the Programmatic 4(f) Evaluation for the Mitchell River Bridge Project as a substitute for the stringent requirements of Section 4(f).

Sincerely,



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National Trust for Historic Preservation



Paul Brandenburg, Chair
Historic SPANs Task Force



Kitty Henderson, Executive Director
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cc: Mary Ann Naber, Federal Preservation Officer, FHWA
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