

APPENDIX B

Section 106 Consultation and Memorandum of Agreement

Memorandum of Agreement

*December 22, 2010: SHPO Letter Regarding
Eligibility of Holt Road Site*

*September 1, 2011: FHWA Submittal to the
SHPO of Summary of Phase I Archaeological
Survey*

*September 2, 2011: SHPO Letter Regarding
FHWA Submittal of Archaeological Survey
Summary*

*October 20, 2011: FHWA Submittal to ACHP of
800.11(e) Documentation and
Invitation to Participate*

*November 1, 2011: ACHP Acknowledgement
of FHWA Submittal of 800.11(e) Documentation*

**KENTUCKY TRANSPORTATION CABINET
MEMORANDUM OF AGREEMENT
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO 36 CFR Part 800.6(a)
US 127 Relocation/Reconstruction Project
Clinton and Russell County, Kentucky
Item No 8-108.00/115.00**

Signatories

Federal Highway Administration - Kentucky Division
John C. Watts Federal Building
330 W. Broadway
Frankfort, KY 40601

Kentucky State Historic Preservation Office
300 Washington Street
Frankfort, Kentucky 40601

Invited Signatories

Kentucky Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

WHEREAS, the Federal Highway Administration (FHWA) and Kentucky Transportation Cabinet (KYTC) have determined that the US 127 Relocation/Reconstruction Project in Clinton and Russell Counties, Kentucky (The Project) will result in an adverse effect upon the Creelsboro Rural Historic District, a property determined eligible for the National Register of Historic Places (NRHP) by consensus under Criteria A and C; and may have an effect upon archaeological sites eligible for the NHRP; and

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

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

WHEREAS, it is agreed that opportunities to mitigate for the adverse effect to the Creelsboro Rural Historic District within the area of effect are extremely limited; and

WHEREAS, it is agreed that it is in the public interest to mitigate the adverse effects of The Project on archaeological sites eligible for listing in the NRHP through the recovery of significant information therein contained; and

WHEREAS, the consulting parties agree that Indian Tribes that may attach religious or cultural importance to the affected property have been consulted and have raised no objection to the work proposed; and

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

Stipulations

FHWA will ensure that the following measures are undertaken and completed. FHWA may delegate to KYTC any or all of its responsibilities identified within this document:

I. Creelsboro Rural Historic District

The SHPO will be advised and consulted prior to finalizing plans to assure that the plans and specifications appropriately incorporate the measures contained within this document:

- A. National Register Nomination**—FHWA/KYTC shall ensure that the Creelsboro Rural Historic District is successfully listed on the NRHP incorporating existing information utilized for the eligibility determination and Section 106 studies. The district was first determined eligible for the National Register by consensus of the SHPO and the U.S. Army Corps of Engineers in 1988. Additional information to support that determination was gathered by KYTC and FHWA for The Project. Further research may be required to complete the National Register nomination sheet.
- B. Educational Documentary**—FHWA/KYTC shall produce a digital video, approximately 25-30 minutes in length, that will develop a comprehensive historical context of the Creelsboro Rural Historic District including Jackman Bottom, Creelsboro Bottom, Swan Pond Bottom, Salt Lick Bottom, and Wells Bottom, highlighting the importance of the region prior to the construction of Wolf Creek Dam. This video will be produced for audiences of public television and for educational centers in the vicinity of The Project. The content of the video will be based on existing archival, architectural, and archaeological data. If additional off-site mitigation is required for Adverse Effects to archaeological sites, the scope of the video may be expanded, in consultation with the SHPO.
- C. Interpretive Panels**—FHWA/KYTC shall develop no fewer than three interpretive panels describing the history and significance of the Creelsboro Rural Historic District. These panels shall be installed at locations to be determined, but in an area easily accessible to the general public, and shall be constructed in the style of the panels used in the National Parks. FHWA/KYTC shall be responsible for the development and placement of the panels, in consultation with the SHPO.
- D. Bridge Lighting**—The SHPO will be given the opportunity to review and comment on proposed bridge lighting treatments when plans are available. FHWA/KYTC shall work to minimize light infiltration into the Creelsboro Rural Historic District from the completed bridge over the Cumberland River.

II. Archaeology

The FHWA shall ensure that all archaeological work required by this Memorandum of Agreement will be carried out by Preservation Professionals meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9) (Secretary's Standards). The FHWA will consult with the Kentucky SHPO for concurrence that the Preservation Professionals meet these Standards.

A. Phase I Archaeological Survey

Phase I archaeological survey will be conducted for all unsurveyed parcels within The Project right-of-way, prior to the initiation of any ground disturbing activities, such as utility relocations or construction, to determine if they contain archaeological sites that are eligible for listing in the NRHP. Upon completion of the survey, a report will be prepared in accordance with the SHPO's most current Specifications for Archaeological Field Work and Assessment Reports (SHPO Specifications) and will be submitted by the FHWA to the SHPO and interested Indian Tribes for review and comment.

B. Phase II Archaeological Testing

If Phase I survey of previously unsurveyed parcels (see Section II.A above) identifies archaeological sites considered by the FHWA, in consultation with the SHPO, to be potentially eligible for listing in the NRHP, they will be further tested for eligibility. Based upon survey conducted for The Project, archaeological sites 15Ct160, 15Ct161, and 15Ru83 are known to require Phase II testing, if not avoided. If impacted by The Project, these sites will be tested prior to the initiation of any ground disturbing activities, such as utility relocations or construction, to determine their eligibility for listing in the NRHP. Upon completion of the testing, a report will be prepared in accordance with the SHPO Specifications and will be submitted by the FHWA to the SHPO and interested Indian Tribes for review and comment.

C. Archaeological Mitigation

1. Archaeological sites 15Ct61 and 15Ru140 are located within the proposed right-of-way of The Project and have been determined eligible for listing on the NRHP under Criterion D, scientific data content. If these, or other sites determined to be eligible for the NRHP through Phase II testing cannot be avoided and will be impacted by The Project, the FHWA will consult with the SHPO and other parties whom the FHWA deems appropriate, and develop a research design and recovery plan (Plan) in conformance with the Secretary's Standards. The Plan will be submitted to the SHPO for review and comment. Unless the SHPO comments or objects within thirty (30) days of receiving the Plan, The FHWA shall ensure that the Plan is implemented.
2. Procedures for addressing the treatment of human remains and grave goods shall be guided by the Advisory Council on historic Preservation's (ACHP) *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects*" (adopted by the ACHP February 23, 2007), the KYTC's *Right of Way Manual Section 1300*, and other applicable state and local laws. If human remains, associated burial items, sacred items, or items of cultural patrimony are found during Project

activities, construction activities in those areas will be halted and the FHWA shall provide written notification and documentation to the SHPO, Indian Tribes, and other parties deemed appropriate by the FHWA who have requested such notification. The FHWA shall consult with them to discuss avoidance, minimization of disturbance, or protocols for disinterment.

D. Alternative Mitigation

If deemed appropriate by the FHWA, in consultation with the SHPO, considerations for alternative mitigation for adverse effects to these archaeological sites *may* include one or more of the following:

1. Development of a digital video regarding relevant archaeology and the archaeological process in Kentucky.
2. Development of a booklet about relevant archaeology in Kentucky.
3. Development of lesson plans or other educational components for use in K-12 Project Archaeology classroom exercises.
4. Development of web-based materials including but not limited to web pages and pod casts relating to relevant archaeology.

The FHWA shall be responsible for executing and implementing alternative mitigation measures.

E. Unanticipated Discoveries

1. If, during the implementation of The Project, a previously unidentified historic property is discovered or a previously identified historic property is affected in an unanticipated manner, the KYTC shall ensure that all work within a reasonable area of the discovery shall cease until such time as a treatment plan can be developed and implemented as set forth below.
2. The KYTC shall require the contractor to take all reasonable measures to clearly mark and avoid harm to the property until the FHWA concludes consultation with the SHPO, Indian Tribes, and other parties deemed appropriate by the FHWA (hereafter in this section the "Parties").
3. Upon being notified of the discovery, the FHWA shall implement procedures set forth in 36 CFR 800.13(b).
4. Within forty-eight (48) hours of notification of the discovery, or at the very earliest opportunity thereafter, the FHWA shall contact the Parties, and provide written details of the discovery.
5. Within forty-eight (48) hours of the discovery, or at the very earliest opportunity thereafter, a qualified professional archaeologist and the KYTC shall conduct an on-site evaluation to consider eligibility, effects, and possible treatment measures. The

Parties may participate in the on-site evaluation and shall be notified in advance of the location, date, and time.

6. If, based on the on-site evaluation, the FHWA determines that a historic property is being adversely affected, then the Parties shall consult to determine an appropriate treatment plan, and the FHWA will develop a treatment plan. The plan will be submitted to the Parties for review and comment within seven (7) days of receipt of the proposed plan. The FHWA will take comments received into account in developing and implementing the final plan.
7. If the FHWA and the Parties agree the site is not eligible for the NRHP, then ground-disturbing work may proceed.
8. If the FHWA and the Parties cannot reach agreement regarding eligibility, effects, or treatment, then they shall follow the provisions outlined in the Resolution of Disagreements.

III. Resolution of Disagreements

Should the SHPO object within 30 days to any plans, specifications, reports or other actions submitted or undertaken pursuant to this MOA, the FHWA and the KYTC shall consult with the SHPO to resolve the objection. If the FHWA and the KYTC determine that the objection cannot be resolved, the FHWA shall request the further comments of the ACHP pursuant to 36 CFR 800.6(b). Any ACHP comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this MOA that are not the subjects of the dispute will remain unchanged.

IV. Terms

The terms of this agreement shall be completed within five years of its execution. If terms have not been completed the document shall be considered extended for an additional year each anniversary year thereafter until all provisions have been completed.

V. Opt-Out

- A. Any modification or amendment of this agreement shall be in writing.
- B. Termination of this agreement by any party shall be preceded by written notice delivered to other signatories a minimum of thirty (30) days prior to the anticipated date of termination and shall clearly state the reason for said action.

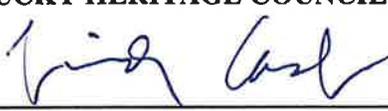
Execution of this Memorandum of Agreement and implementation of its terms evidence that the FHWA has afforded the Advisory Council an opportunity to comment on The Project and The Project's effect on historic properties, and that the FHWA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

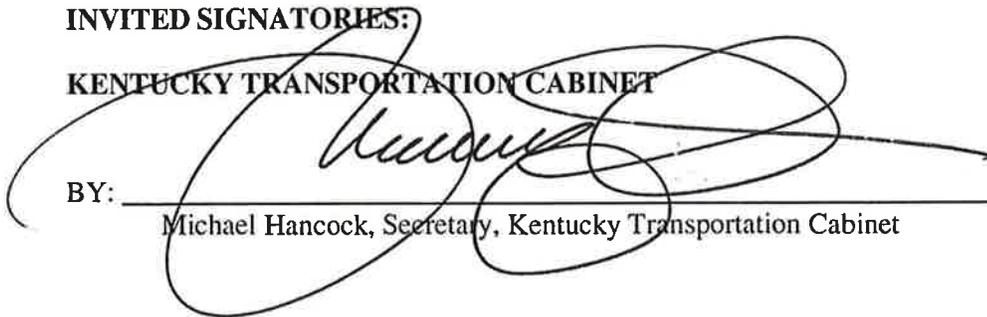
BY:  11-14-2011
Jose Sepulveda, Kentucky Division Administrator Date

KENTUCKY HERITAGE COUNCIL

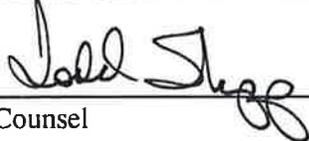
BY:  10/18/2011
Lindy Casebier, Acting State Historic Preservation Officer Date

INVITED SIGNATORIES:

KENTUCKY TRANSPORTATION CABINET

BY:  9/28/11
Michael Hancock, Secretary, Kentucky Transportation Cabinet Date

**APPROVED AS TO FORM AND LEGALITY
KENTUCKY TRANSPORTATION CABINET**

BY:  9/22/11
General Counsel Date

**ACCEPTED FOR THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

BY: _____ Date



STEVEN L. BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL**

MARCHETA SPARROW
SECRETARY

THE STATE HISTORIC PRESERVATION OFFICE
300 WASHINGTON STREET
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-7005
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MARK DENNEN
EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

December 22, 2010

Mr. David Waldner, P. E., Director
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

**Re: Additional Site Within Area of Potential Effect: RU-574, 108 Holt Road
Russell Co., KY, Item No. 8-108.00/115.00**

Dear Mr. Waldner:

Pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 U. S. C. Sec. 470f) and implementing regulations at 36 C. F. R. Part 800, the Kentucky State Historic Preservation Office received for review and comment a letter with an addendum to a survey report prepared by Helen Powell that was reviewed by our office on April 22, 2009 in regards to the above-referenced project. The addendum includes the survey of a previously overlooked resource, RU-574. Our office concurs with the findings of the author and agrees that RU-574 is not eligible for the National Register of Historic Places under Criteria A, B, or C. We request that an updated survey form be completed for this resource and sent to our office. If you have questions, please contact Vicki Birenberg of my staff at (502) 564-7005, extension 127.

Sincerely,

Mark Dennen
Executive Director and
State Historic Preservation Officer

cc: Amanda Abner – KYTC - DEA

MD:vmb



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

Kentucky Division

September 1, 2011

330 West Broadway
Frankfort, KY 40601
PH (502) 223-6720
FAX (502) 223 6735
<http://www.fhwa.dot.gov/kydiv>

In Reply Refer To:
HPD-KY

Mr. Lindy Casebier
Acting Executive Director and
State Historic Preservation Officer
Kentucky Heritage Council
300 Washington St.
Frankfort, KY 40601

Subject: Management Summary
US 127 Relocation/Reconstruction Project
Clinton and Russell Counties, Kentucky
Item No. 8-108 and 8-115

Dear Mr. Casebier:

Enclosed for your review and concurrence is the summary that details the results of Phase I archaeological survey for the above mentioned project. The survey investigated twenty-seven archaeological sites (15Ct61, 15Ct154-167, 15Ru45, 15Ru83, 15Ru85, 15Ru86, and 15Ru140-147), two Isolated Finds (IF 1 and 2), and four historic map structures.

- The author recommends that sites 15Ct154, 15Ct155, 15Ct156, 15Ct157, 15Ct159, 15Ct162, 15Ct163, 15Ct164, 15Ct165, 15Ct166, 15Ct167, 15Ru45, 15Ru141, 15Ru142, 15Ru143, 15Ru144, 15Ru145, 15Ru146, 15Ru147, the two Isolated Finds (IF 1 and 2), and four historic map structures are not eligible for listing in the National Register of Historic Places and recommend no further work. FHWA and KYTC concur with the author.
- 15Ct160, 15Ct161 and 15Ru83 are potentially eligible for listing in the National Register of Historic Places and recommend Phase II testing if these sites cannot be avoided. FHWA and KYTC Staff concur with the author.
- The author recommends that site 15Ct158 is potentially eligible for listing in the National Register of Historic Places and recommend Phase II testing. Based on the small number of artifacts, absence of any diagnostic artifacts, relatively shallow soils, no material recovered below the plow zone, and amount of adjacent disturbance, FHWA and KYTC do not concur with the author and recommends no further work.
- The author recommends that site 15Ct140 with its associated Late Prehistoric/Mississippian and historic early to mid-nineteenth century components is

potentially eligible for listing in the National Register of Historic Places and recommend Phase II testing. FHWA and KYTC Staff do not concur with the author. Rather, we feel that there is sufficient information to determine the site is eligible for listing in the National Register of Historic Places and should be mitigated if it cannot be avoided.

- The author recommends that site 15Ct61, a historic cemetery, is eligible for listing in the National Register of Historic Places and should be mitigated if it cannot be avoided. FHWA and KYTC Staff concur with the author.

A number of properties could not be surveyed. If the proposed projects right-of-way impacts one of these un-surveyed areas, or the proposed projects right-of-way is shifted to include additional un-surveyed areas, archaeological investigations will be conducted and coordinated with your staff prior to construction.

We request concurrence with these recommendations from the SHPO on the condition that a complete report is submitted within 90 days. We also request that any additional archaeology for this project be covered under a Memorandum of Agreement. If you have any questions, please contact

If you have any questions, please contact me at your convenience (502) 223-6742.

Sincerely yours,



Anthony Goodman
Environmental Specialist
Federal Highway Administration

Enclosure

cc: David Waldner, KYTC - DEA



STEVEN L. BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL**

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LINDY CASEBIER
ACTING EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

September 2, 2011

Mr. Anthony Goodman
Environmental Specialist
Federal Highway Administration
330 West Broadway
Frankfort, KY 40601

**Re: Management Summary
US 127 Relocation/Reconstruction Project
Clinton and Russell Counties, Kentucky
KYTC Item No. 8-108 and 8-115**

Mr. Goodman,

This office has received the above mentioned management summary for review. The summary documented the Phase I archaeological investigation of twenty-seven archaeological sites (15Ct61, 15Ct154-167, 15Ru45, 15Ru83, 15Ru85, 15Ru86, and 15Ru140-147), two isolated finds (IF 1 and 2), and four historic map structures. Based on these findings, FHWA recommends no further archaeological investigation of sites 15Ct154, 15Ct155, 15Ct156, 15Ct157, 15Ct158, 15Ct159, 15Ct162, 15Ct163, 15Ct164, 15Ct165, 15Ct166, 15Ct167, 15Ru45, 15Ru141, 15Ru142, 15Ru143, 15Ru144, 15Ru145, 15Ru146, and 15Ru147. Additionally, FHWA recommends no further archaeological investigation of the two isolated finds (IF 1 and 2), nor the four historic map structures sites. However, FHWA has determined that sites 15Ct160, 15Ct161 and 15Ru83 are potentially eligible for listing in the National Register of Historic Places and recommends Phase II testing if these sites cannot be avoided. Finally, FHWA has determined that sites 15Ct61 and 15Ct140 are eligible for listing in the National Register of Historic Places and should be mitigated if impacts cannot be avoided. From your letter, it is our understanding that the FHWA is requesting expedited concurrence with these determinations. We are prepared to offer concurrence with these determinations, but this concurrence is conditional upon the review and acceptance of the final Phase I report by November 30, 2011.

If you have any questions, please do not hesitate to contact Phillip Johnson of my staff at (502) 564-7005 ext 122.

Sincerely,

Lindy Casebier, Acting Executive Director
Kentucky Heritage Council and
State Historic Preservation Officer

LC:prj

cc. David Waldner (KYTC-DEA)
Carl Shields (KYTC-DEA)



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

Kentucky Division Office

October 20, 2011

330 West Broadway
Frankfort, KY 40601
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In Reply Refer To:
HPD-KY

Reid Nelson, Director
Office of Federal Agency Program
Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Ave., NW, #803
Washington, D.C. 20004

Subject: 800.11(e) Documentation for US 127 Reconstruction in Clinton and Russell Counties, Kentucky

Dear Mr. Nelson:

Pursuant to Section 36 CFR 800.6(a)(1), we hereby notify the Council of a Determination of Adverse Effect on the Creelsboro Rural Historic District by the proposed US 127 Reconstruction/ Relocation in Clinton and Russell Counties, Kentucky. A finding of Adverse Effect was recommended by FHWA and the Kentucky Transportation Cabinet and concurred in by the SHPO (letter attached).

Enclosed is an electronic copy of the Cultural Historic Survey and documentation of associated public and agency involvement in which the Adverse Effect is identified. Measures to avoid, minimize, or mitigate adverse effects are being developed and incorporated into a Memorandum of Agreement as the project process proceeds.

We are asking the Council if you would like to participate in the resolution of this adverse effect by replying to this office. If you have any questions, please do not hesitate to contact me at 502-223-6742 or email at Anthony.Goodman@dot.gov.

Sincerely yours,

Anthony Goodman
Environmental Specialist
Federal Highway Administration

Enclosure – Cultural Historic Survey and associated documents (CD)

cc: David Waldner (KYTC)





Preserving America's Heritage

November 1, 2011

Anthony Goodman
Environmental Specialist
FHWA – Kentucky Division
330 West Broadway
Frankfort, KY 40601

Ref: *Proposed US 127 Reconstruction/Relocation Project
Clinton and Russell Counties, Kentucky*

Dear Mr. Goodman:

On October 21, 2011, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information provided, we have concluded that Appendix A, *Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed. However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and it is determined that our participation is needed to conclude the consultation process, please notify us.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA), developed in consultation with the Kentucky State Historic Preservation Office (SHPO), and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA, and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

Thank you for providing us with the notification of adverse effect. If you have any questions or require further assistance, please contact Ms. Najah Duvall-Gabriel at 202 606-8585 or at ngabriel@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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