

PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY
ADMINISTRATION,
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,
MARYLAND STATE HISTORIC PRESERVATION
OFFICER,
AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
THROUGH ITS STATE HISTORIC PRESERVATION OFFICER,
PURSUANT TO 36 CFR § 800.14(b)(1)
REGARDING THE US 219 MEYERSDALE TO OLD SALISBURY ROAD PROJECT,
SR 6219, SECTION 050
IN SUMMIT AND ELK LICK TOWNSHIPS, SOMERSET COUNTY,
PENNSYLVANIA,
AND GARRETT COUNTY, MARYLAND

WHEREAS, the Federal Highway Administration (“FHWA”), the U.S. Army Corps of Engineers (“USACE”), the Advisory Council on Historic Preservation (“ACHP”), the Pennsylvania State Historic Preservation Officer (“SHPO”) and the Pennsylvania Department of Transportation (“PennDOT”) on February 17, 2023 executed a Programmatic Agreement (“Delegation PA”) regarding implementation of the Federal Aid Highway Program in Pennsylvania and/or highway projects requiring a USACE permit in Pennsylvania;

WHEREAS, PennDOT proposes to improve SR 219 in Summit and Elk Lick Townships, Somerset County, Pennsylvania and in Garrett County, Maryland (hereafter referred to as “the Project”);

WHEREAS, through the PEL and NEPA processes, PennDOT has developed five alternatives: No Build Alternative, Alternative DU Modified, Alternative DU Shift Modified, Alternative E Modified, and Alternative E Shift Modified;

WHEREAS, PennDOT has established the Project area of potential effect (APE), as defined at 36 CFR § 800.16(d), to include the proposed limits of disturbance of all project alternatives for archaeology, approximately 1,837 acres, as well as the limits of disturbance of all project alternatives, along with additional areas that could be subject to indirect effects, including visual, auditory, or atmospheric effects, approximately 2,304 acres, for above ground historic resources (see Attachment A);

WHEREAS, PennDOT, pursuant to 36 CFR § 800.4(c) and the Delegation PA, has determined, in consultation with the Pennsylvania SHPO (PA SHPO) and the Maryland SHPO (MD SHPO), that the S.J. Miller School, Miller Farm/Earnest and Carrie V. Miller Residence, Lowry Farm, Deal Farm/Ambrose Deal Farm, and Jacob Glotfelty Barn in Pennsylvania; the Mason-Dixon Line Marker No. 191, in Pennsylvania and Maryland; and the Tomlinson Inn and Little Meadows and

National Road in Maryland are included in or eligible for inclusion in the National Register of Historic Places (“National Register”);

WHEREAS, PennDOT has completed a Phase Ia archaeological assessment and is proposing additional archaeological investigations for the selected alternative in final design;

WHEREAS, PennDOT, pursuant to 36 CFR § 800.5(d)(2) and the Delegation PA, has determined that the No Build Alternative does not meet project Purpose and Need and will not be considered further;

WHEREAS, PennDOT has identified a preferred alternative, Alternative E Shift Modified, that will have No Adverse Effect to aboveground historic properties;

WHEREAS, the PA and MD SHPOs concurred with the aboveground historic properties effect report on April 24, 2024, and April 26, 2024, respectively;

WHEREAS, PennDOT, pursuant to 36 CFR § 800.3 and the Delegation PA, has identified Mark and Martha Albright; Douglas R. Baer; Ronald J. Baer; Donald Billman; Jason A. Blocher; Jerry L. Deal; Myron Deal; Keystone Lime Company Co., Inc. (represented by Kendra K. Folk); Dennis Grube; Kathy Hughes; the Meyersdale Public Library (represented by Jennifer Hurl); the Meyersdale Area Historical Society (represented by Jennifer Hurl); Austin Hutzel; Ronald and Vanessa Johnson; the Town of Grantsville, MD (represented by Robin Jones, Town Administrator, and Emily Newman-Edwards, Mayor); Rachel Kimmel; The Capuchin Friars, Province of St. Augustine (represented by R. Joseph Kusnir); Mark Marsula; The Salisbury Historical Society (represented by J. Michael McKenzie); Meyersdale Area Schools (represented by Wayne Miller); the Braddock Road Preservation Association (represented by Walter Powell, Ph.D.); Patricia Showalter, and Kevin L. and Donna Weimer as consulting parties for the Project;

WHEREAS, PennDOT, on behalf of FHWA, will continue to involve the public and consulting parties as stipulated under the National Environmental Policy Act (NEPA) of 1969, as amended, the NHPA, and 36 CFR § 800, in a manner consistent with FHWA and PennDOT public involvement procedures;

WHEREAS, the FHWA, in cooperation with PennDOT, has consulted with the PA and MD SHPOs, pursuant to the Delegation PA, 36 CFR § 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 USC § 306108) and the FHWA, PennDOT, and the MD and PA SHPOs determined that it is appropriate to enter into this PA, pursuant to the Delegation PA and 36 CFR 800.14(b);

WHEREAS, this PA sets forth the measures that will be implemented to identify and take into account the effects of the Undertaking on historic properties;

WHEREAS, the FHWA has contacted federally recognized Tribal Nations with ancestral ties to Pennsylvania and/or Maryland who may attach religious or cultural significance to historic properties within the APE, namely the Absentee-Shawnee Tribe of Indians of Oklahoma; the Delaware Nation, Oklahoma; the Delaware Tribe of Indians; the Eastern Shawnee Tribe of

Oklahoma; the Onondaga Nation; the Seneca-Cayuga Nation; the Shawnee Tribe; the Tuscarora Nation; the Seneca Nation of Indians; and the Stockbridge-Munsee Community Band of Mohican Indians;

WHEREAS, the Delaware Nation, Oklahoma and the Seneca Nation of Indians have requested to be consulting parties;

WHEREAS, the FHWA has contacted the State of Maryland recognized Tribal Nation, the Cedarville Band of Piscataway Indians, who have ancestral ties to the project area and they have requested to be consulting parties;

WHEREAS, PennDOT has notified the ACHP of the programmatic agreement and the ACHP has declined to participate on July 16, 2024;

WHEREAS, PennDOT participated in the consultation regarding this Project pursuant to the Delegation PA and will sign this PA, thus becoming a party upon execution of this PA;

NOW, THEREFORE, the FHWA, PennDOT, the PA SHPO, and the MD SHPO agree that upon FHWA's decision to proceed with the Project, FHWA shall ensure that PennDOT and the concurring parties implement the following stipulations in order to take into account the effects of the proposed action on historic properties.

1. Recitals

The recitals set forth above are incorporated by reference as a material part of the PA.

2. Stipulations for Resolving Adverse Effects

A. Archaeological Historic Properties.

- a. Prior to construction of the Selected Alternative, PennDOT shall complete an archaeological survey of that alternative. The archaeological survey will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (46 FR 44720-23), also taking into account the National Park Service's publication The Archaeological Survey: Methods and Uses (1978: GPO stock #024-016-00091), Standards and Guidelines for Archaeological Investigations in Maryland (1994) and the Pennsylvania State Historic Preservation Office's Guidelines for Archaeological Investigations in Pennsylvania (2021). Any archaeological resources identified within the APE will be evaluated in accordance with 36 CFR 800.4 (c). PennDOT will contact the Maryland Commission on Indian Affairs prior to the

survey to inquire as to whether they would like to consult on the project. PennDOT will submit a report on the findings of the survey to the FHWA, the PA and MD SHPOs, and any consulting Tribes and Nations, and other consulting parties for their review and comment. The PA and MD SHPO's concurrence will be requested on the eligibility of archaeological properties. The review period will be 30 days.

- b. If eligible archaeological resources are identified within the APE in Pennsylvania, PennDOT will make a reasonable effort to avoid or minimize effects to these resources. If the eligible resources cannot be avoided, PennDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR 800.5. If the project will have an adverse effect on archaeological sites, and if these resources are eligible chiefly under National Register Criterion D (36 CFR § 63) for the significant information in prehistory or history they are likely to yield through data recovery, PennDOT will ensure that a data recovery plan, or a plan for alternative mitigation, is developed in consultation with the PA SHPO, Tribes and Nations, and other consulting parties. Any data recovery plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and will take into account the Council's publication Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites. The data recovery or alternative mitigation plan will be submitted to the FHWA, the PA SHPO, Tribes and Nations, and other consulting parties for their review and comment. The review period will be 30 days.

- c. If eligible archaeological resources are identified within the APE in Maryland, PennDOT will make a reasonable effort to avoid or minimize effects to these resources. If the eligible resources cannot be avoided, PennDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR 800.5. If the project will have an adverse effect on archaeological sites, and if these resources are eligible chiefly under National Register Criterion D (36 CFR § 63) for the significant information in prehistory or history they are likely to yield through data recovery, PennDOT will ensure that a Memorandum of Agreement (MOA) is developed in consultation with the MD SHPO, Tribes and Nations, and other consulting parties. Any MOA will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological

Documentation (48 FR 44734-37) and will take into account the Council's publication Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites. The data recovery or alternative mitigation plan will be submitted to the FHWA, the MD SHPO, Tribes and Nations, and other consulting parties for their review and comment. The review period will be 30 days.

- d. PennDOT shall ensure that any human remains, and/or grave-associated artifacts, encountered during the archaeological investigations in Pennsylvania are brought to the immediate attention of the FHWA, the PA SHPO, and any federally recognized Tribes and Nations that may attach religious and/or cultural significance to the affected property. Notification will be within 48 hours of the discovery. No activities which might disturb or damage the remains will be conducted until FHWA, in consultation with the appropriate parties, has developed a treatment plan that considers the comments of the appropriate parties. All procedures will follow the guidance outlined in the National Park Service Publication National Register Bulletin 41: Guidelines for Evaluating and Registering Cemeteries and Burial Places, taking into account the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601), and the Pennsylvania Historical and Museum Commission's Policy for the Treatment of Burials and Human Remains (1993).
- e. Should any burials, interments, or intact or disarticulated human remains (hereafter, "Remains") be encountered during the archaeological investigations in Maryland, all work in the vicinity of the Remains will be immediately stopped to prevent damage to the Remains, or to any additional Remains that might be present in the vicinity. A minimum 100-foot buffer around identified Remains will be established free of disturbance, to be adjusted as appropriate for the site conditions. Archaeological excavations may occur outside the buffer unless evidence of additional Remains is found. Remains will be treated respectfully at all times, with access and visibility limited to authorized personnel at the site of discovery. Pursuant to the State of Maryland Criminal Code 10-402, the State's Attorney must authorize movement or removal of any Remains until determined to be archaeological. If the remains are determined to be archaeological, PennDOT, MD SHPO and other relevant consulting parties will consult to determine treatment of the Remains and any

other necessary work needed to define the extent of Remains in the most expeditious manner feasible. If the Remains are determined archaeological and suspected to be of Native American origin, PennDOT, MD SHPO, and FHWA shall provide notification to relevant Tribes within 24 hours or as soon as practicable. Subject to applicable federal law, PennDOT and FHWA will consult with affected Tribes, the Maryland Commission on Indian Affairs, and state-recognized Indian Tribes, as appropriate, regarding treatment of the Remains. PennDOT will accommodate tribal cultural preferences to the extent practicable. In consultation with the MD SHPO, FHWA, and Tribes (if consulting) or other relevant consulting parties, such as identified descendants or descendant communities, PennDOT shall develop a plan for the treatment or disposition of the Remains. PennDOT shall implement the provisions of the agreed Treatment Plan.

- f. All records and materials resulting from the archaeological investigations will be curated in accordance with 36 CFR Part 79, the curation guidelines developed by the Pennsylvania Historical and Museum Commission (2006), and/or Technical Update No. 1 of the Standards and Guidelines for Archaeological Investigations in Maryland: Collections and Conservation Standards (2018).
 - i. Artifacts recovered from Commonwealth property and all associated records will be curated at the State Museum of Pennsylvania or their designee.
 - ii. For artifacts recovered in Maryland, PennDOT shall provide for curation of any significant material remains and all associated records resulting from cultural resources investigations conducted for the Project at the Maryland Archaeological Conservation Laboratory (MAC Lab). For any items for which title or deed of gift has not been provided to the State of Maryland, or for which curation is not appropriate, PennDOT will consult with the MD SHPO and the Tribes, if applicable, on disposition.
 - iii. When artifacts are recovered from property not owned by the Commonwealth of Pennsylvania or State of Maryland, PennDOT will explain to the property owner the importance of artifact donation and will request that the owner sign a gift agreement donating the artifacts to the State Museum or the

MAC Lab. If the property owner does not wish to donate the artifacts, PennDOT will complete the necessary analyses prior to returning the artifacts and will submit all records to the State Museum or MAC Lab.

- iv. Should a federally recognized Tribe or Nation request artifacts, FHWA will consider the request in consultation with the State Museum of Pennsylvania and/or the MAC Lab.
- v. PennDOT will submit archeological collections to the PHMC or the Maryland Archaeological Conservation Laboratory within three months of acceptance of the final report. PennDOT will be responsible for the curation fee in Pennsylvania and/or Maryland.

Administrative Stipulations

A. Personnel Qualifications

PennDOT shall ensure that all archaeological work carried out pursuant to this PA is carried out by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards for Archaeologists, and that all historic preservation work is carried out by, or under the direct supervision of, a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals.

PennDOT shall ensure that all archaeological investigations completed in areas identified as having soil contamination will be completed by individuals that have completed a 40-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) training course and have maintained an 8-hour annual refresher course.

B. Late Discoveries

If any unanticipated discoveries of historic properties or archaeological sites are encountered during the implementation of this undertaking, PennDOT shall suspend work in the area of the discovery, and PennDOT shall immediately notify the FHWA. In compliance with 36 CFR § 800.13, FHWA shall notify, within 24 hours, the ACHP, the SHPO, and, if applicable, federally recognized Tribal Nations that attach religious and/or cultural significance to the affected property. The SHPO, the FHWA, PennDOT, and Tribal representatives, as appropriate, may conduct a joint field view within 72 hours of the notification to the FHWA. The FHWA, in consultation with the appropriate parties, will determine an appropriate treatment of the discovery prior to the resumption of construction activities within the area of discovery.

C. Amendments

Any party to this PA may propose to FHWA that the PA be amended, whereupon FHWA shall consult with the other parties to this PA to consider such an amendment. Section 36 CFR § 800.6(c)(7) shall govern the execution of any such amendment. Any time periods set forth in this PA may be extended by letter of agreement signed by the authorized representatives of FHWA, SHPO, and other invited signatories and approved as to form and legality by PennDOT's Office of Chief Counsel.

D. Resolving Objections

- a) Should any party to this PA object in writing to FHWA regarding any action carried out or proposed with respect to the Project, or implementation of this PA, FHWA shall consult with the objecting party to resolve the objection. If after initiating such consultation FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1) Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;
 - 2) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
 - 3) Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
- b) Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.
- c) FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; FHWA's responsibility to carry out all actions under this PA that are not the subject of the objection shall remain unchanged.

E. Resolution of Objections by the Public

At any time during implementation of the measures stipulated in this PA, should any objection pertaining to any such measure, or its manner of implementation, be raised by a member of the public, FHWA shall notify the parties of this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

F. Duration

This PA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time the FHWA may consult with the other signatories to reconsider the terms of this PA and amend it in accordance with Administrative Stipulation C above.

G. Termination

- a) Any signatory may terminate this PA by providing notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this PA will require compliance with 36 CFR § 800.
- b) If at any time during the course of the Project, PennDOT cancels the Project or withdraws its request for federal funding, PennDOT will so notify the FHWA. The FHWA will notify the other signatories, and the ACHP, that it is terminating this PA. The FHWA, in consultation with those parties, will consider the effects of any Project-related activities undertaken prior to Project cancellation or withdrawal of the funding request, and the FHWA will assess its responsibilities and obligations pursuant to 36 CFR § 800 and determine steps to terminate this PA.

H. Severability

The provisions of this PA shall be severable. If any phrase, clause, sentence or provision of this PA is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this PA and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

I. Assignment

The responsibilities included in this PA may not be assigned by any party to this PA, either in whole or in part, without the written consent of the Signatories.

J. Notices

a) The contact person for each of the signatories of the PA shall be the following:

- 1) For FHWA: Team Leader for Planning and Environment 30 North 3rd Street, Suite 700, Harrisburg, PA 17101, Telephone Number: (717) 221-3735.
- 2) For PennDOT: Director, Bureau of Design and Delivery, 400 North Street, 7th Floor, Harrisburg, PA 17120, Telephone Number: (717) 787- 3310.
- 3) For PA SHPO: Deputy SHPO, 400 North Street, 2nd Floor, Harrisburg, PA 17120, Telephone Number: (717) 787-4215.
- 4) For MD SHPO: Administrator, Review and Compliance, Maryland Historical Trust, 100 Community Place, 3rd Floor, Crownsville, MD 21032, Telephone Number: (410) 697-9541.

b) Any signatory may change its designated contact person by providing written notice to the other signatories.

3. Counterparts

This PA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This PA may be signed electronically.

[Signature Pages Follow]

Execution of this PA by the FHWA and the SHPO, and implementation of its terms, is evidence that the FHWA has taken into account the effects of the undertaking on historic properties.

FEDERAL HIGHWAY ADMINISTRATION

Per FHWA Pennsylvania Division Delegation of Authority

By: *(sign)* _____
(print name)

Date: _____

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: *(sign)* _____
(print name)

Date: _____

Approved as to Legality and Form

By: _____
for Chief Counsel (PHMC)

Date: _____

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By: *(sign)* _____
(print name)

Date: _____

Invited Signatory:

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: *(sign)* _____
(print name)

Date: _____

Approved as to Legality and Form

By: _____
for Chief Counsel (PennDOT)

Date: _____

By: _____
Deputy General Counsel

Date: _____

By: _____
Deputy Attorney General

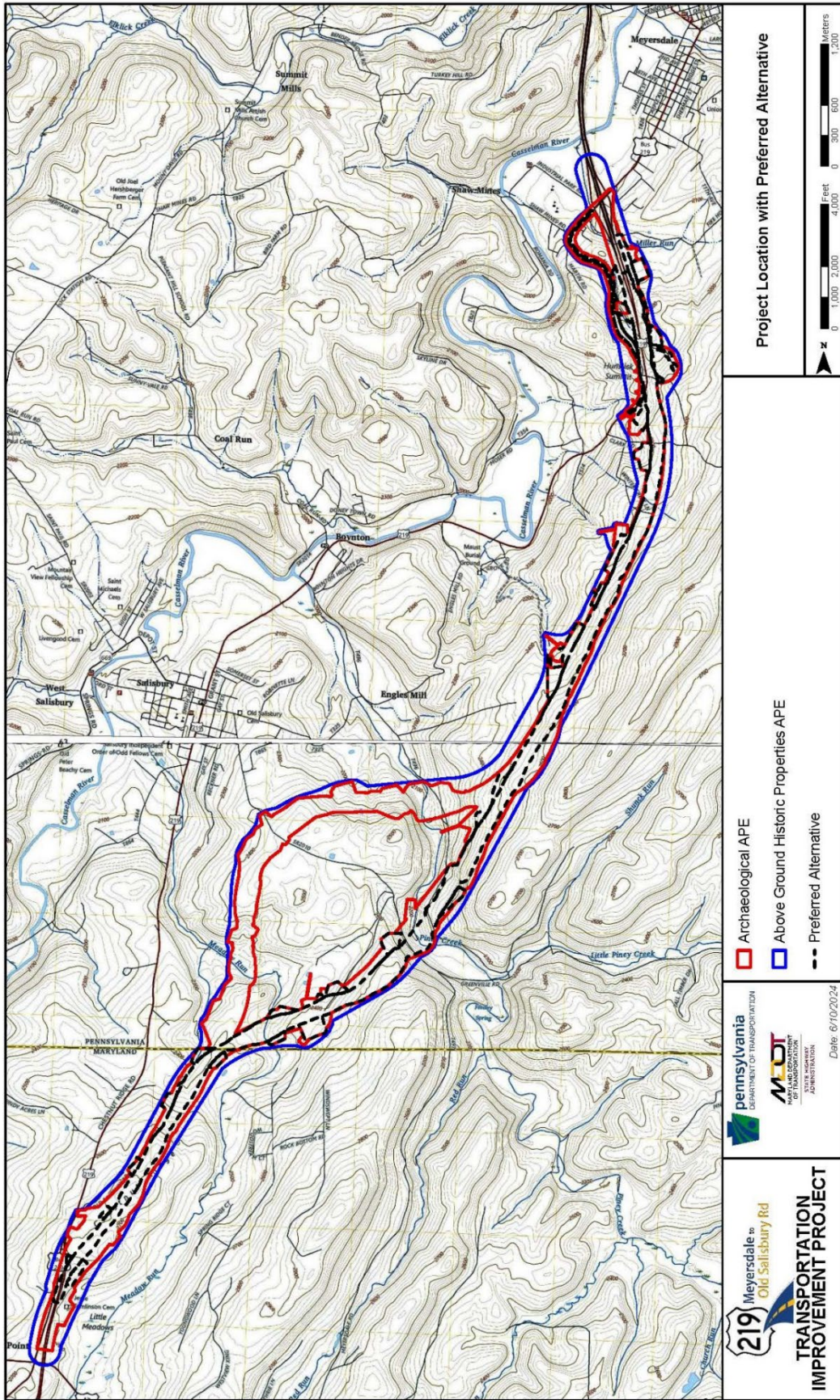
Date: _____

Concurring Parties

**MARYLAND DEPARTMENT OF TRANSPORTATION, STATE HIGHWAY
ADMINISTRATION**

By: (sign) _____
(print name)

Date: _____



SOMERSET COUNTY, US 219 MEYERSDALE TO OLD SALISBURY ROAD
 PA-SHARE PR #2021PR06554, MPMS #115845, 08/14/2024