

APPENDIX H

Memorandum of Agreement



U.S. Department
of Transportation
Federal Highway
Administration

Minnesota Division

October 28, 2009

380 Jackson Street
Gallier Plaza, Suite 500
St. Paul, MN 55101-4802

651.291.6100
Fax 651.291.6000

www.fhwa.dot.gov/mndiv

Mr. Don Kilma
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, NW Suite 809
Washington, D.C. 20004

Re: Section 106 Memorandum of Agreement
SP 7106-71 & 7106-73, TH-169 Freeway Conversion Project City of Otsego, Wright
County & Cities of Elk River & Zimmerman & Livonia Township, Sherburne County,
Minnesota

Dear Mr. Klima:

We have consulted with the Minnesota State Historic Preservation Officer and the Minnesota Department of Transportation, and we have agreed on measures to mitigate the effects on the historic property for the above referenced project; as documented in the enclosed executed Memorandum of Agreement (MOA). By copy of this letter, a copy of the fully executed MOA is being provided to all the signatories of the MOA.

If you have any questions about the project or the enclosed MOA, please contact me at (651) 291-6126.

Sincerely yours,

Timothy J. Anderson, PE
Highway Engineer

Enclosure



TJA/jer

cc: 1 Mn/DOT – Craig Johnson, MS 620
1 SHPO – Dennis Gimmestad
1 RF
1 Anderson

SECTION 106 MEMORANDUM OF AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION (FHWA)
AND THE
MINNESOTA STATE HISTORIC PRESERVATION OFFICE (SHPO)
PURSUANT TO 36 CFR 800.6 (B) (IV)
REGARDING THE TRUNK HIGHWAY 169 FREEWAY CONVERSION PROJECT
(S.P. 7106-71 AND S.P. 7106-73)
IN
OTSEGO, WRIGHT COUNTY, MINNESOTA
ELK RIVER, SHERBURNE COUNTY, MINNESOTA
LIVONIA TOWNSHIP, SHERBURNE COUNTY, MINNESOTA
ZIMMERMAN, SHERBURNE COUNTY, MINNESOTA

WHEREAS, the Minnesota Department of Transportation (Mn/DOT) plans to reconstruct Trunk Highway (TH) 169 as a freeway facility from the TH 10/101/169 system interchange in Elk River to County State Aid Highway (CSAH) 4 in Zimmerman. The project also includes reconstruction of TH 101 from the CSAH 39 interchange in Otsego to the TH 10/101/169 system interchange, including reconstruction of the TH 101 bridge over the Mississippi River; and

WHEREAS, the Federal Highway Administration (FHWA) is providing Federal-Aid highway funds to Mn/DOT for preliminary engineering and design for interchange construction at CSAH 4 and TH 169 in the City of Zimmerman (S.P. 7106-71); and

WHEREAS, the Project is not funded for construction within the 2009-2028 planning period for Mn/DOT District 3. The TH 169 freeway conversion from TH 10 in Elk River to Zimmerman is identified in the *Draft District 3 Highway Investment Plan 2009-2028* (February 2009) as an unfunded high priority need; and

WHEREAS, the FHWA, in consultation with the Minnesota State Historic Preservation Office (SHPO) identified the St. Paul and Pacific (BNSF) Railroad Corridor Historic District as a historic property eligible for the National Register of Historic Places; and

WHEREAS, the FHWA, in consultation with the SHPO, has determined that reconstruction an approximately one-mile long segment of the St. Paul and Pacific (BNSF) Railroad Corridor Historic District on a new alignment located approximately 75 feet to the north of the existing alignment will have adverse effects to the property under Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 800); and

WHEREAS, the FHWA has consulted with the SHPO and the Minnesota Department of Transportation (Mn/DOT) pursuant to 36 CFR 800.6(b)(1) to resolve the adverse effects of the undertaking on historic properties; and

WHEREAS, the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its finding of adverse effect in accordance with 36 CFR 800.6(a)(1), and has provided the

documentation specified in 36 CFR 800.11(e) and the ACHP has declined to participate in the consultation;

WHEREAS, the FHWA, in consultation with the SHPO, has invited Mn/DOT to sign this MOA as an invited signatory in accordance with 36 CFR 800 (c) (4); and

WHEREAS, since this project has the same adverse effect on the St. Paul and Pacific (BNSF) Railroad Corridor Historic District as the TH 10 freeway facility project in Elk River (S.P. 7102-123), the mitigation to resolve the adverse effect is the same for both projects and require separate MOA's; and

NOW, THEREFORE, the FHWA, the SHPO, and Mn/DOT agree that upon the FHWA's approval of the undertaking, the FHWA will ensure that the following stipulations shall be implemented in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA will ensure that the following measures are carried out:

STIPULATION I. INTERPRETIVE DISPLAY

A. The Mn/DOT will develop an interpretive display (e.g., kiosk) for the St. Paul and Pacific (BNSF) Railroad Corridor Historic District. This interpretive display will focus on the role of the St. Paul and Pacific (BNSF) Railroad Corridor Historic District in the development of the Elk River area and the importance of the railroad corridor in providing railroad access to communities along the Mississippi River. The interpretive display will be placed on Mn/DOT-owned property at the Elk River Northstar Commuter Rail Park and Ride facility (north of the St. Paul and Pacific [BNSF] Railroad Corridor). The placement of the interpretive display on Mn/DOT property at the Northstar Commuter Rail Park and Ride facility will be coordinated with the SHPO.

B. Mn/DOT will submit a draft of the interpretive display content and draft design of the interpretive display, including how it relates to the Park and Ride facility and Northstar Commuter rail station to the SHPO for review and concurrence.

C. Mn/DOT will construct and install the interpretive display at the Elk River Northstar Commuter Rail Park and Ride facility within one (1) year of project letting .

STIPULATION II. AMENDMENTS

Any signatory to this Memorandum of Agreement (MOA) may request in writing to the FHWA that it be amended, whereupon the parties shall consult to consider the proposed amendment. The regulations at 36 CFR 800 shall govern the execution of any such amendment.

STIPULATION III. DISPUTE RESOLUTION

Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree, any one of the signatories may request the participation of the ACHP to assist in resolving the dispute.

STIPULATION IV. TERMINATION

Any signatory to this MOA may terminate the agreement by providing thirty (30) days' written notice to the other signatories, provided the signatories consult during the period prior to termination to agree on amendments or other actions that would avoid termination.

STIPULATION V. DURATION

If the terms of this agreement have not been completed within two (2) years from the date the project is let, this agreement will be considered null and void. If the FHWA anticipates that the agreement will not be implemented within this timeframe, it will notify the signatories in writing at least thirty (30) days prior to the agreement becoming invalid. The agreement may be extended by the written concurrence of the signatories. If the agreement becomes invalid and the FHWA elects to continue with the undertaking, the FHWA will reinstate review of the undertaking in accordance with 36 CFR 800.

Execution of this MOA by the FHWA and the SHPO and implementation of its terms evidence that the FHWA has taken into account the effects of its undertaking on historic properties and has afforded the ACHP opportunity to comment.

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

By: Cheryl B. Martin
for Derrell Turner, Division Administrator

10/22/09
Date

MINNESOTA STATE HISTORIC PRESERVATION OFFICE (SHPO)

By: Nina Archibal
Nina Archibal, State Historic Preservation Officer
Britta L. Blaasberg, Deputy SHPO

9/28/09
Date

Invited Signatories:

MINNESOTA DEPARTMENT OF TRANSPORTATION (Mn/DOT)

By: Thomas K. Sorel
Thomas K. Sorel, Commissioner

9/30/09
Date